



CREDIT UNION COMMISSION MEETING

Credit Union Department Building
914 East Anderson Lane
Austin, Texas

June 20, 2014

AGENDA

<u>TAB</u>		<u>PAGE</u>
A.	Call to Order (8:00 a.m.) – Chair Manny Cavazos	4
	a. Ascertain Quorum	
	b. Appoint Recording Secretary	
	c. Announce Executive Session	
	d. Invitation for Public Input for Future Consideration	
	e. Receive Requests and Motions for Excused Absences	
B.	Receive and Approve Minutes of the Commission’s Regular Meeting on February 21, 2014	7
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D.	Committee Reports	
	a. Rules Committee – Rob Kyker, Chair will Report on the Committee’s Recommendations Approved at its Public Meeting on June 19, 2014:	
	1. Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification	80
	2. Discussion, Consideration, and Possible Vote to Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and approve for republication the Revised Proposed Amendments to 7 TAC Section 91.502	84
	3. Discussion, Consideration, and Possible Vote to Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit)	88

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5. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three percent fee limitation: Section 50(a)(6a)(E)), 153.15 (Location of Closing: Section 50(a)(6)(N)), and 153.51 (Consumer Disclosure: Section 50(g))	111
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b. Discussion, Consideration, and Possible Vote to Approve the Department’s Operating Plan and Budget for Fiscal Year 2015	142
c. Discussion of the Chair’s Appointments to the Commission’s Two Standing Committees (Rules and Commissioner Evaluation)	183
d. Confirm Date for Next Commission Meeting (October 17, 2014)	
G. Executive Session – The Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551	
H. Adjournment	187

In the event the Commission does not finish deliberation of an item on the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Linda Clevlen by mail, telephone, or email.

A

CALL TO ORDER

TEXAS CREDIT UNION COMMISSION MEMBERS

- *Manuel “Manny” Cavazos, Chair*
- *Gary L. Janacek*
- *Sherri B. Merket*
- *Allyson “Missy” Morrow*
- *Rob Kyker*
- *Kay Stewart*
- *Gary D. Tuma*
- *Vik Vad*
- *A. John Yoggerst*

Legal Counsel

- *Nancy S. Fuller*

Staff

- *Harold E. Feeney*
- *Daniel J. Buckley*
- *Stacey L. McLarty*
- *Isabel Velasquez*

**FUTURE CREDIT UNION
COMMISSION MEETING DATES**

Friday, October 17, 2014

Friday, February 20, 2015

Friday, June 19, 2015

All regular scheduled meetings will begin at 8:00 a.m. unless notified differently.

If anyone has conflicts with the proposed dates, please contact Isabel Velasquez at (512) 837-9236.

B

CREDIT UNION COMMISSION MEETING MINUTES

A draft copy of the minutes for the February 21, 2014 meeting, and the corresponding follow-up action report, are located under **Tab B**.

RECOMMENDED ACTION: The Department requests that the Commission approve the minutes as presented.

RECOMMENDED MOTION: I move that the minutes of the Commission's regular meeting of February 21, 2014 be approved as presented.

**CREDIT UNION COMMISSION
MEETING MINUTES
FEBRUARY 21, 2014**

A. CALL TO ORDER - ASCERTAIN A QUORUM - Chairman Manuel “Manny” Cavazos declared that a quorum was present and called the meeting to order at 9:10 a.m. in the Capitol Extension, Room E2.010 of the Texas State Capitol, Austin, Texas, pursuant to Chapter 551 of the Government Code. Other members present included Gary Janacek, Sherri Merket, Rob Kyker, Kay Stewart, Gary Tuma, and Vik Vad. Missy Morrow was absent due to a scheduling conflict. Assistant Attorney General Nancy Fuller was in attendance to serve as legal counsel. Representing the Department staff were Harold E. Feeney, Commissioner, Daniel J. Buckley, Deputy Commissioner, and Stacey McLarty, Assistant Commissioner and General Counsel. Chairman Cavazos appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted (**February 11, 2014, TRD#2014001045**). Without objection, the Chair reserved the right to rearrange agenda items as necessary.

- **INVITATION FOR PUBLIC INPUT FOR FUTURE CONSIDERATION** -- Chairman Cavazos invited public input on matters that were not scheduled items on today’s agenda for possible future consideration by the Commission. No public comments were received.

- **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES**
-- Chairman Cavazos inquired if there were any requests or motions to excuse an absence. Mr. Kyker moved to excuse the absence of Missy

Morrow. Ms. Merket seconded the motion, and the motion was unanimously adopted.

Chairman Cavazos requested a second motion to excuse Mr. Tuma's absence at the next Commission meeting. Mr. Kyker moved to excuse the absence of Gary Tuma from the meeting on June 20, 2014. Ms. Stewart seconded the motion, and the motion was unanimously adopted.

B. RECEIVE MINUTES OF PREVIOUS MEETING (October 18, 2013) --

The Chairman referred the members to the draft minutes contained in the agenda packet. Mr. Yoggerst pointed out a typographical error related to his arrival time at the meeting. He noted that he arrived at 8:05 a.m. not 8:05 p.m. Mr. Yoggerst moved for approval of the minutes of October 18, 2013, as corrected; Mr. Kyker seconded the motion, and the motion was unanimously adopted.

C. COMMUNICATIONS

The Chairman referred the members to the correspondence contained in the agenda packet. Commissioner Feeney noted the letter from the Speaker of the House reiterating the importance of appropriate oversight by all Texas Commissions and Boards. He also pointed out the certification from the Texas Workforce Commission that the Department's Equal Employment & Workforce Diversity Plan was compliant with the appropriate statutes. And finally, Mr. Feeney briefly highlighted the Interim Committee Charges for the House Committee on Investments and Financial Services. No formal action was taken.

D. COMMITTEE REPORTS

Rules Advisory Committee -- Mr. Kyker, Chair of the Rules Committee, reported on the Committee's public meeting held on February 20, 2014. He provided an overview of all Committee recommendations:

(a) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.401 Concerning Purchase, Lease, or Sale of Fixed Assets.

Committee Chair Kyker explained that the recommendation was for the Commission to adopt the proposed amendments to 7 TAC Section 91.401 without changes to the proposals previously published in the Texas Register. He reported that no written comments were received on the proposal.

(b) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.405 Concerning Records Retention and Preservation.

Committee Chair Kyker explained that the recommendation was for the Commission to adopt the proposed amendments to 7 TAC Section 91.405 without changes to the proposals previously published in the Texas Register. He reported that no written comments were received on the proposal.

(c) Discussion, Consideration, and Possible Vote to Repeal 7 TAC Part 6, Chapter 91, Subchapter K (relating to Residential Mortgage Loan Originators Employed by a CUSO) in its entirety.

Committee Chair Kyker explained that the recommendation was for the Commission to repeal 7 TAC Part 6, Chapter 91, Subchapter K in its entirety as previously published in the Texas Register. He reported that no written comments were received on the proposal.

(d) Discussion, Consideration, and Possible Vote to Readopt 7 TAC Part 6, Chapter 93 (relating to Administrative Proceedings) in its entirety.

Committee Chair Kyker explained that the recommendation was for the Commission to find that the reasons for initially adopting the rules contained within 7 TAC Part 6, Chapter 93 continue to exist and that all of those rules be readopted without change. He reported that no written comments were received on these rules during the review.

(e) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification.

Committee Chair Kyker explained that the recommendation was for the Commission to approve for publication and comment the proposed amendments to 7 TAC Section 91.501. He noted that the proposed amendments requires credit unions to develop and implement an annual plan to provide continuing education for its board of directors. He further indicated that the proposal would allow each credit union to tailor its annual plan to the individual needs of each director and the operations of the credit union.

(f) Discussion of and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

Committee Chair Kyker explained that the recommendation was for the Commission to approve for publication and comment the proposed amendments to 7 TAC Section 91.502. He noted that the proposed amendments require credit union to disclose the payment of director fees to the credit union's membership

and grant enforcement authority to the Department to limit or prohibit a particular credit union from paying director fees if circumstances warrant.

Mr. Kyker then made a motion on behalf of the Rules Committee that the Commission adopt all Committee recommendations as previously explained. A second was not needed and the motion passed unanimously.

E. UNFINISHED BUSINESS

(a) Discussion and Consideration of the Department's FY 2014 Budget. Commissioner Feeney directed the Commission to the financial statements for January. He noted that for the first five months of FY 2014, operating income totaled \$1,827,265, which is \$27,537 more than the year-to-date budgeted amount. He also pointed out that the funds held in Contingency Fund Reserves as of August 31, 2013 was \$188,657 over the cap. In accordance with Commission policy, he explained that those excess funds will be used to reduce the operating fees for credit unions this fiscal year. Accordingly, the Department will only collect \$2,835,729 from credit unions this year instead of the budgeted \$3,024,386.

During the same five-month period, he noted that approximately \$1,139,946 was spent operating the Department, which is \$117,677 below the year-to-date budget. Mr. Feeney also explained that to date there have been no cost overruns on the parking lot project and the project should be completed on or about the first week in April.

(b) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department. Deputy Commissioner Buckley reported that Texas credit unions continue to report favorable results. He explained that the number of active state-chartered credit unions was 189 with total assets of \$30.5 billion, which is an increase of \$2 billion since year-end 2012. Mr. Buckley also highlighted various ratios and other financial statistics. After a brief discussion, no formal action was taken by the Commission.

F. NEW BUSINESS

(a) Discussion, Consideration, and Possible Vote to Approve and Authorize the Submission of the Department's Annual Internal Risk Assessment Report as Required by Section 2102, Government Code. Commissioner Feeney noted that the Texas Government Code requires smaller agencies to conduct a formal risk assessment each year and submit the written assessment to the State Auditor's Office. He noted that Staff had completed the internal risk assessment and has prepared a written assessment of the risks along with the controls the Department has in place to mitigate those risks for submission to the Auditor's Office.

After a short discussion, Mr. Tuma moved that the Commission approve the Department's Internal Risk Assessment Report and authorize its submission to the State Auditor's Office. Mr. Vad seconded the motion and the motion was unanimously adopted.

(b) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to the Commission's Policies Manual, as Part of its

Annual Policy Review to Revise the Policies on Designation of a Vice Chair, Commission Member Travel, Ethical Standards, Use of Technology, Budget, and the Commissioner Succession Plan. Commissioner Feeney indicated that in accordance with Commission's Policy, the Commission is required to review its policies manual at least once each year. He reported that staff is recommending that the Commission make various changes, including:

- Converting the vice chair from an elected position to a designation made by the Chair of the Commission;
- Changing the guidelines for reimbursement of meals and lodging from the General Appropriations Act to the locality-based rates approved by the Office of the Comptroller of Public Accounts;
- Integrating the General Counsel position into the specific restrictions that deal with lending transactions and deposit relationships with credit unions;
- Clarifying that full-time equivalent, or FTE is not the same as authorized positions and instituting a new cap on employment levels; and
- Switching the required review of the Commissioner Succession Plan from an annual event to one that is performing periodically at the Committee's discretion.

After a brief discussion, Mr. Yoggerst moved that the record reflect that the Commission reviewed its policies manual and approved the proposed changes as recommended by staff. Ms. Stewart seconded the motion and the motion was unanimously adopted.

(c) Discussion, Consideration, and Possible Vote to Approve and Authorize the Submission of the Department's Strategic Plan for Fiscal Years 2015-2019. Commissioner Feeney reported that the Texas Government Code

requires that every two years each agency must submit a formal strategic plan that covers a prescribed 5-year horizon. With the aid of internal and industry working groups, he noted that the proposed FY 2015-2019 Strategic Plan summarizes the analysis of the internal and external environment impacting credit unions and the Departments, and highlights the agency's four strategic goals and supporting strategic objectives. Mr. Feeney highlighted the substantive changes from the 2013-2017 Plan including:

1. The strategic initiative to increase examiner resources.
2. The strategic initiative to better identify, train, and nurture the next generation of examiners.
3. The strategic initiative to improve the Department's efforts to retain and develop experienced examination staff through a restructuring of supervisory duties and a greater emphasis on mentoring and specialized training.
4. The strategic initiative to use third parties as contractors to supplement the skills available in current examination staff.
5. The strategic initiative to increase resources related to consumer assistance.
6. The strategic initiative to increase the use of electronic tools and documents in the daily functions of the agency to improve the quality and efficiency of agency activities.

After a lengthy discussion, Mr. Yoggerst moved that the Commission approve the draft of the Strategic Plan for the Department for Fiscal Years 2015-2019 and authorize its submission in the format dictated by the Governor and the LBB. Ms. Merket seconded the motion and the motion was unanimously adopted.

(d) Discussion, Consideration, and Possible Vote to Adopt the General Budget Assumptions and Parameters to be used in Guiding the Development of the Department's FY 2015 Budget. Commissioner Feeney indicated that Finance Code Section 16.003 gives the Commission the exclusive responsibility for approving the Department's budget each year. He noted that

staff is seeking approval of guidelines for developing the FY 2015 budget to be presented at the next meeting.

A lengthy discussion ensued regarding examiner retention and compensation issues. Mr. Tuma suggested that guidelines should include the development of a plan to address the examiner compensation issues. He also indicated that this plan should also include a mechanism to ensure that the compensation levels keep pace with the market. It was the consensus of the Commission that staff should develop a compensation plan for the examination staff and the proposed FY 2015 Budget should include proper funding for the plan.

Mr. Tuma moved that the Commission adopt the proposed FY 2015 budget assumptions and parameters to include the previous discussed examiner compensation issue. Mr. Janacek seconded the motion and the motion was unanimously adopted.

(e) Discussion, Consideration and Possible Vote to Adopt Resolutions Commemorating Gulf Credit Union, and Keystone Credit Union for their Contributions to the Citizens of Texas on the Respective Milestone Anniversary Dates of their Origin. Commissioner Feeney explained that in accordance with policy, the Commission may adopt resolutions honoring credit unions for reaching certain milestones dates. He noted that the Department was presenting two resolutions to honor 50 and 75 years of service.

After a brief discussion, Mr. Kyker moved that the Commission adopt the resolutions commemorating **Gulf Credit Union** and **Keystone Credit Union** for

their contributions to the citizens of Texas on the respective milestone anniversary of their origin and that a copy of the appropriate resolution be mailed to the credit unions. Ms. Merket seconded the motion and the motion was unanimously adopted.

(f) Discussion, Consideration, and Possible Vote to Elect a Vice-Chair to Serve a One-Year Term Expiring in February, 2015. Mr. Cavazos indicated that in accordance with the recently adopted changes to the Commission's Policy the Vice Chair is no longer an elected position. He indicated that the record should reflect that the Chair has designated Rob Kyker as Vice-Chair to serve as presiding officer of the Commission during the absence or inability of the Chair.

G. EXECUTIVE SESSION -- Mr. Cavazos stated that the Commission would be entering into Executive Session as provided under Section 551.071 of the Government Code to consult with legal counsel concerning pending litigation. The Commission entered into Executive Session at 10:17 a.m. and reconvened in open session at 10:22 a.m.

H. OTHER BUSINESS

(a) Vote on Matters Discussed in Executive Session – There was none.

(b) Next Commission Meeting -- Chair Cavazos reminded everyone that the next regular meeting of the Commission has been tentatively scheduled for June 20, 2014 at 8:00 a.m. in Austin.

ADJOURNMENT – There being no further business for the Credit Union Commission, Chairman Cavazos adjourned the meeting at 10:24 a.m.

Manuel “Manny” Cavazos
Chair

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT

FOLLOW-UP ACTION REPORT CREDIT UNION COMMISSION MEETINGS

MINUTES DATE AND REFERENCE/TOPIC	FOLLOW-UP ACTION REQUIRED	STATUS (As of 06-04-14)
<u>February 21, 2014</u>		
7 TAC Section 91.401 Purchase, Lease, or Sale of Fixed Assets	Published in <i>Texas Register</i> as adopted rule	Published in <i>Texas Register</i> on 03-07-14
7 TAC Section 91.405 Records Retention and Preservation	Published in <i>Texas Register</i> as adopted rule	Published in <i>Texas Register</i> on 03-07-14
7 TAC Sections 91.2000-91.2007 Subchapter K Residential Mortgage Loan Originators Employed by a CUSO	Published in <i>Texas Register</i> as repealed rules	Published in <i>Texas Register</i> on 03-07-14
7 TAC Sections 93.101-93.605 Administrative Proceedings	Published in <i>Texas Register</i> as readopted rules	Published in <i>Texas Register</i> on 03-07-14
7 TAC Section 91.501 Director Eligibility and Disqualification	Published in <i>Texas Register</i> with 30 day comment period	Published in <i>Texas Register</i> on 03-07-14
7 TAC Section 91.502 Director Fees and Expenses	Published in <i>Texas Register</i> with 30 day comment period	Published in <i>Texas Register</i> on 03-07-14

C

COMMUNICATIONS

All other communication items relevant and material to the meeting are included under the appropriate tabs.

RECOMMENDED ACTION: No formal action is anticipated to be taken by the Commission. The correspondence is included for your consideration and direction.



CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Daniel J. Buckley
Deputy Commissioner

May 30, 2014

Governor's Office of Budget, Planning and Policy
Fourth Floor, State Insurance Building
Austin, Texas 78711

Dear Sir or Madam:

Enclosed please find the Credit Union Department's biennial Report on Customer Service.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Harold E. Feeney".

Harold E. Feeney
Commissioner

HEF/iv

Enclosure



CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Daniel J. Buckley
Deputy Commissioner

2014 CREDIT UNION DEPARTMENT SATISFACTION QUESTIONNAIRE

In March, the Department announced its nineteenth annual customer satisfaction questionnaire. This is the fourth time state-chartered credit unions were asked to provide their opinions electronically.

Each Texas-chartered credit union received a link to the online annual questionnaire. This year, the questionnaire gathered information from credit unions regarding the quality of service delivered by the Department as required by Chapter 2114 of the Government Code.

Completion of the electronic survey was voluntary and anonymous. Out of the **188** credit unions provided the opportunity to complete the survey, **111** completed the online questionnaire for a response rate of **59 percent**. This compares to a **46 percent** response rate in **2013** and a **40 percent** response rate in **2012**.

In the following pages, the results of the survey are detailed. Charts are provided to show how credit unions as a whole responded to each question. Tables are also provided to break out those responses by credit union asset size.

**CREDIT UNION DEPARTMENT
CREDIT UNION SATISFACTION SURVEY
CURRENT VS. PREVIOUS RESULTS**

	<u>2014</u>	<u>2013</u>	<u>2012</u>
Number of Survey Questionnaires Mailed	188	193	196
Number of Responses Completed	111	88	78
Percentage of Credit Unions Completing Survey	59%	46%	40%
Number of Credit Unions Providing Written Comments	51	44	44
Percentage of CUs that Believe the Department Provides Quality Service	92%	96%	94%

INTERACTION WITH DEPARTMENT

INTERACTION WITH DEPARTMENT

Department Staff is Generally Accessible

Customer Responses

Strongly Agree	92
Somewhat Agree	16
Neither Agree or Disagree	3
Somewhat Disagree	0
Strongly Disagree	0

Overall, Department Staff is Responsive to My Needs

Customer Responses

Strongly Agree	83
Somewhat Agree	18
Neither Agree or Disagree	6
Somewhat Disagree	4
Strongly Disagree	0

Department Staff Provides Timely and Accurate Feedback/Answers

Customer Responses

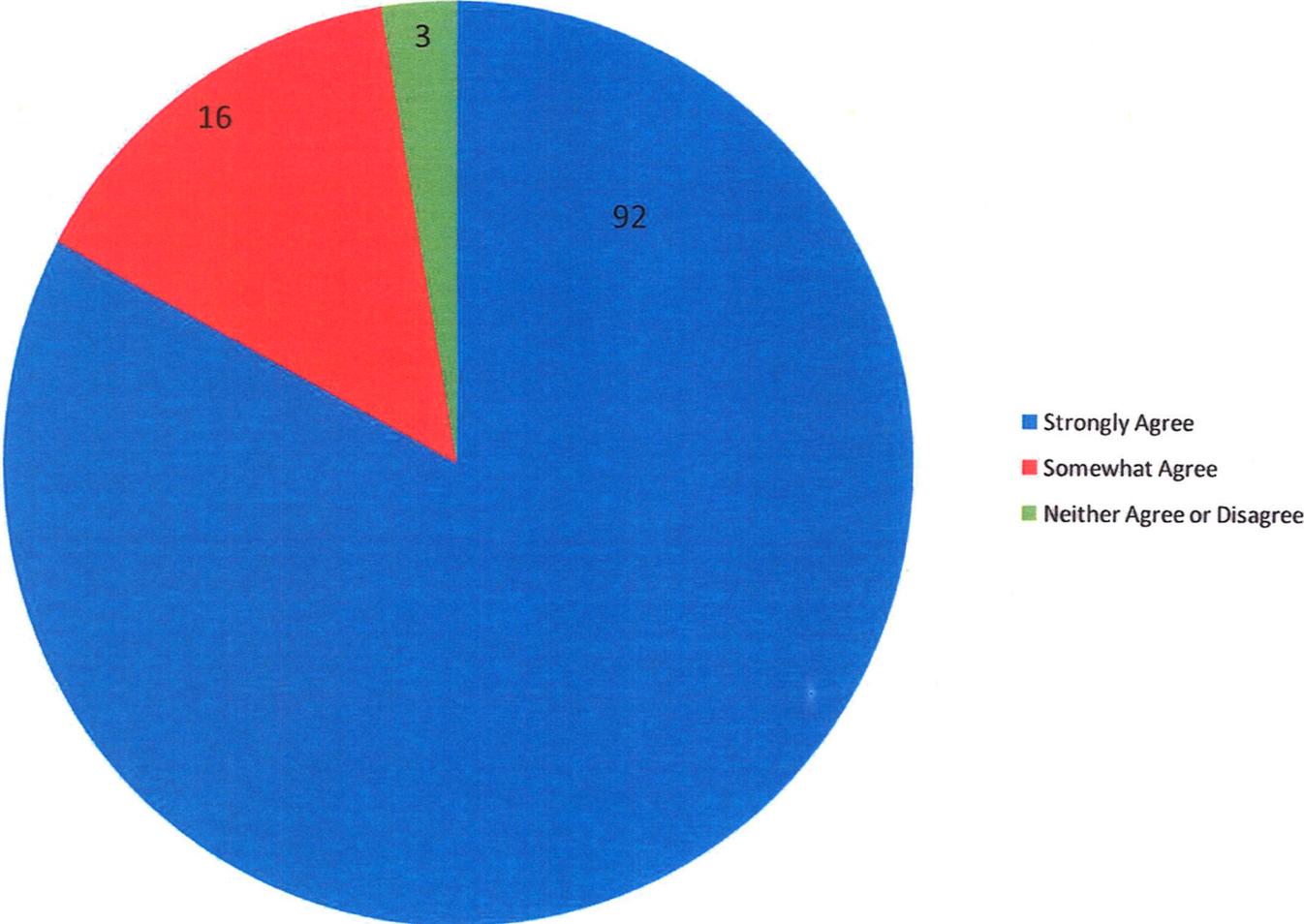
Strongly Agree	82
Somewhat Agree	21
Neither Agree or Disagree	6
Somewhat Disagree	2
Strongly Disagree	0

Overall, My Credit Union's Communication with the Department is Satisfactory

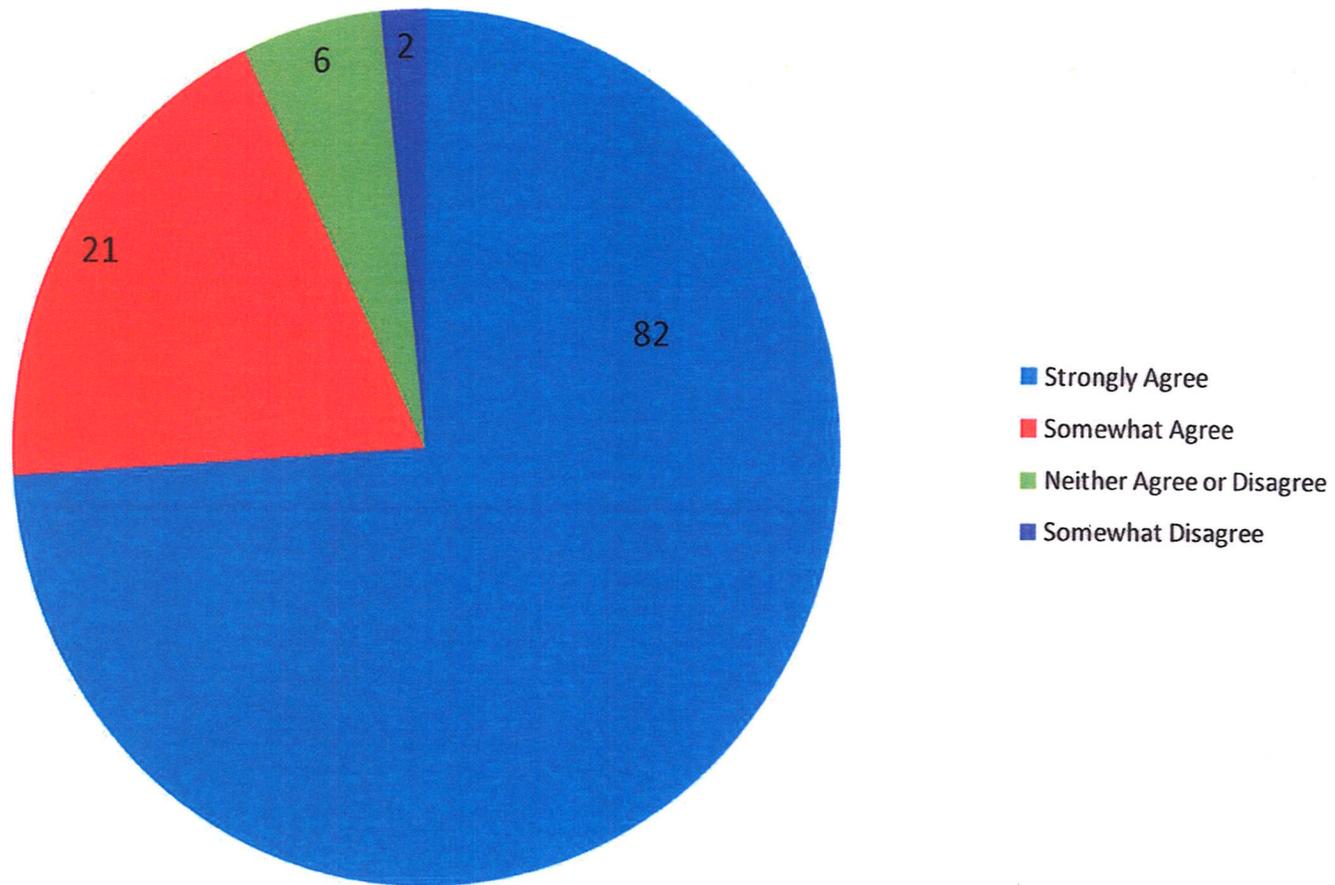
Customer Responses

Strongly Agree	85
Somewhat Agree	18
Neither Agree or Disagree	5
Somewhat Disagree	2
Strongly Disagree	1

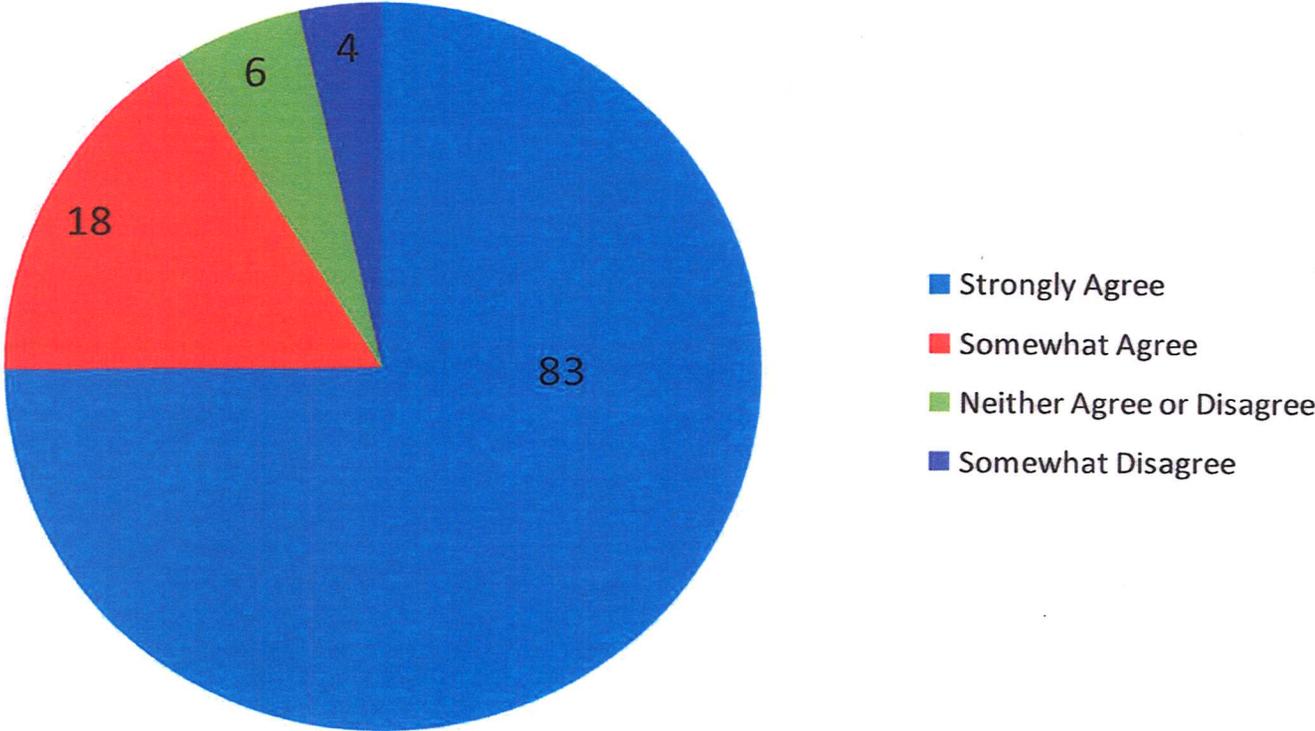
Department Staff is Generally Accessible



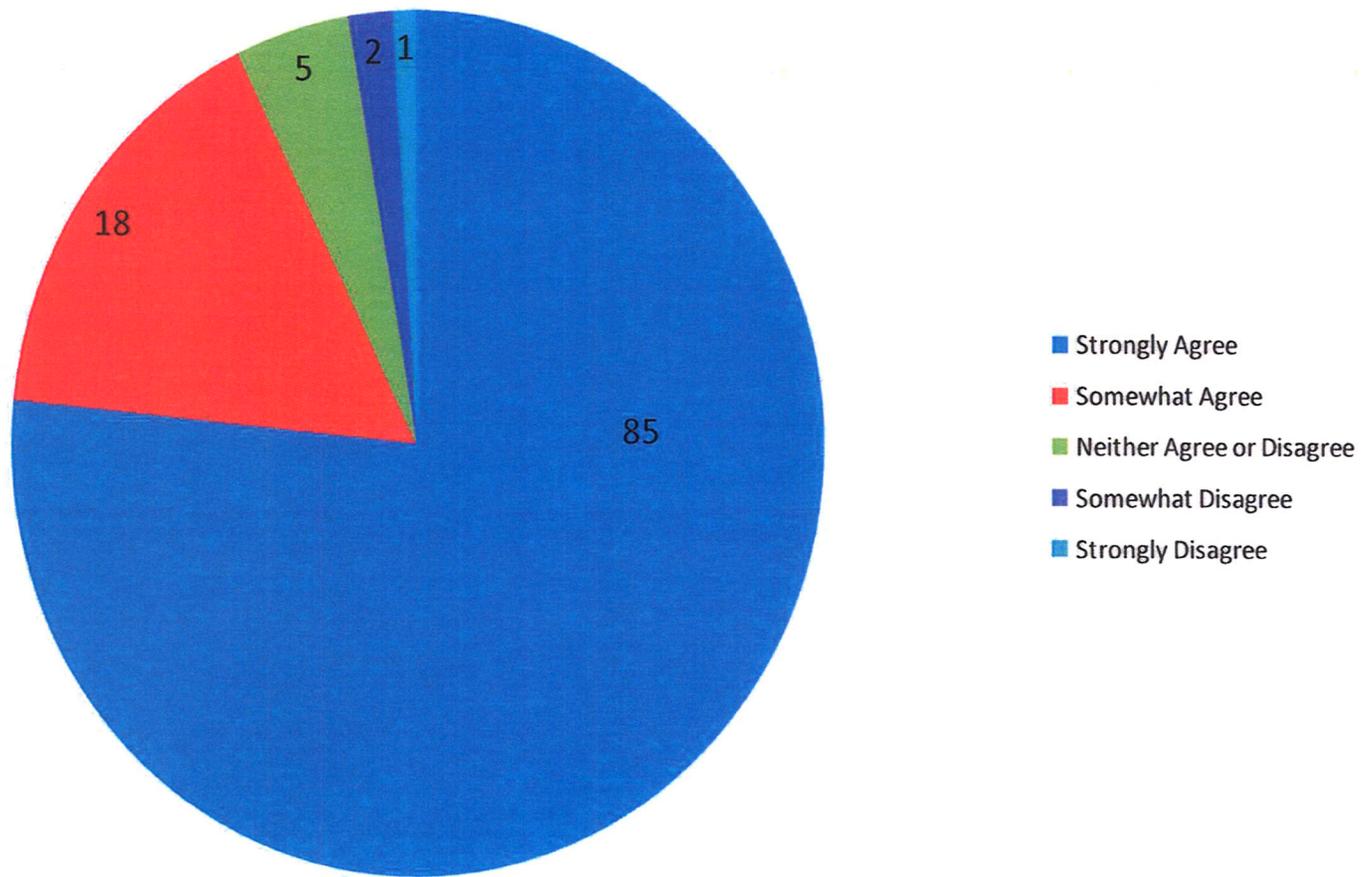
Department Staff Provides Timely and Accurate Feedback/Answers



Overall, Department Staff is Responsive to My Needs



Overall, My Credit Union's Communication with the Department is Satisfactory



COMMUNICATION WITH DEPARTMENT

COMMUNICATION WITH DEPARTMENT

Have you Corresponded with the Department About a Member Complaint within the Last 12 Months?

Customer Responses

Yes	42
No	69

Requests for Information were Reasonable

Customer Responses

Strongly Agree	27
Somewhat Agree	12
Neither Agree or Disagree	1
Somewhat Disagree	1
Strongly Disagree	0

The Issue was Handled in a Professional Manner by the Department

Customer Responses

Strongly Agree	33
Somewhat Agree	3
Neither Agree or Disagree	1
Somewhat Disagree	3
Strongly Disagree	0

The Department's Findings were Based on a Reasonable Interpretation of Applicable Law

Customer Responses

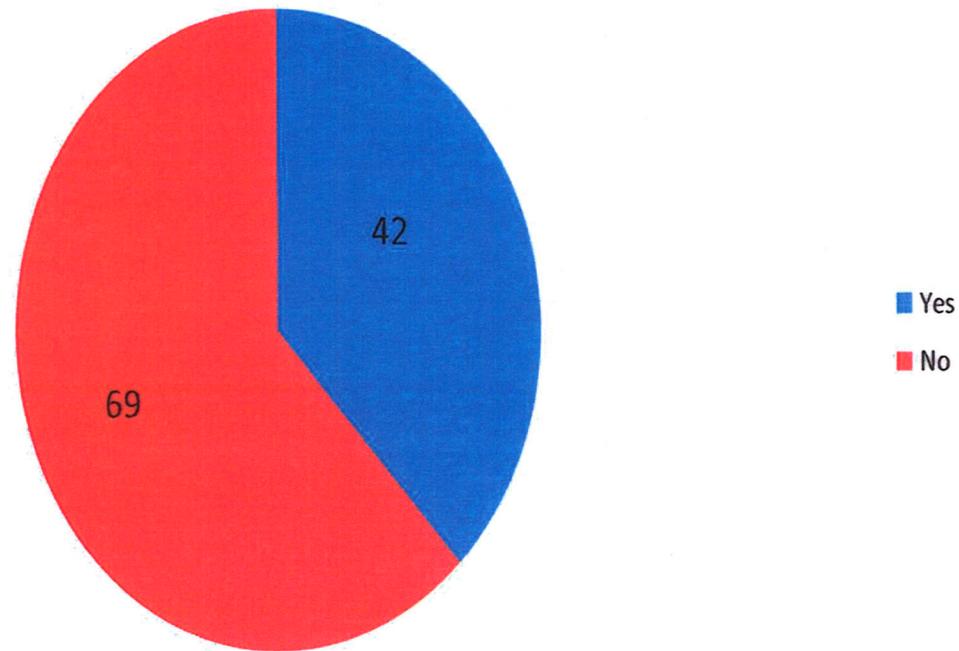
Strongly Agree	30
Somewhat Agree	5
Neither Agree or Disagree	3
Somewhat Disagree	2
Strongly Disagree	0

The Department's Suggestion for Resolving the Matter was Reasonable

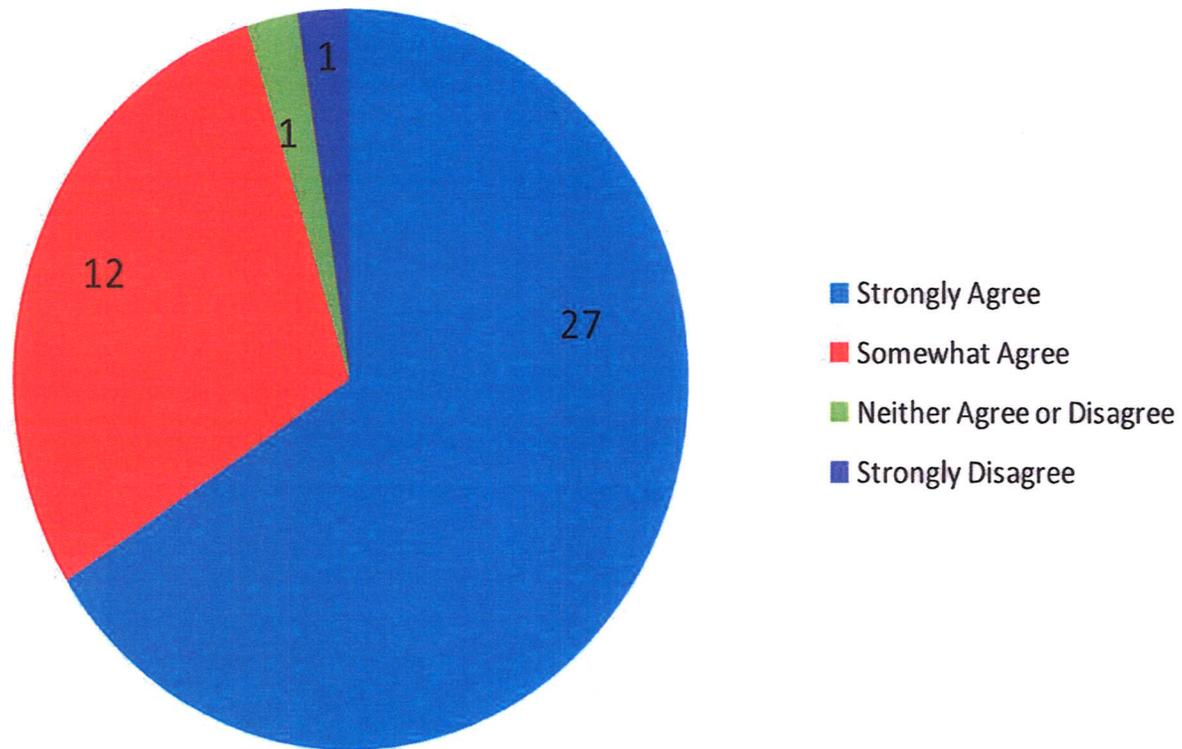
Customer Responses

Strongly Agree	27
Somewhat Agree	6
Neither Agree or Disagree	4
Somewhat Disagree	3
Strongly Disagree	0

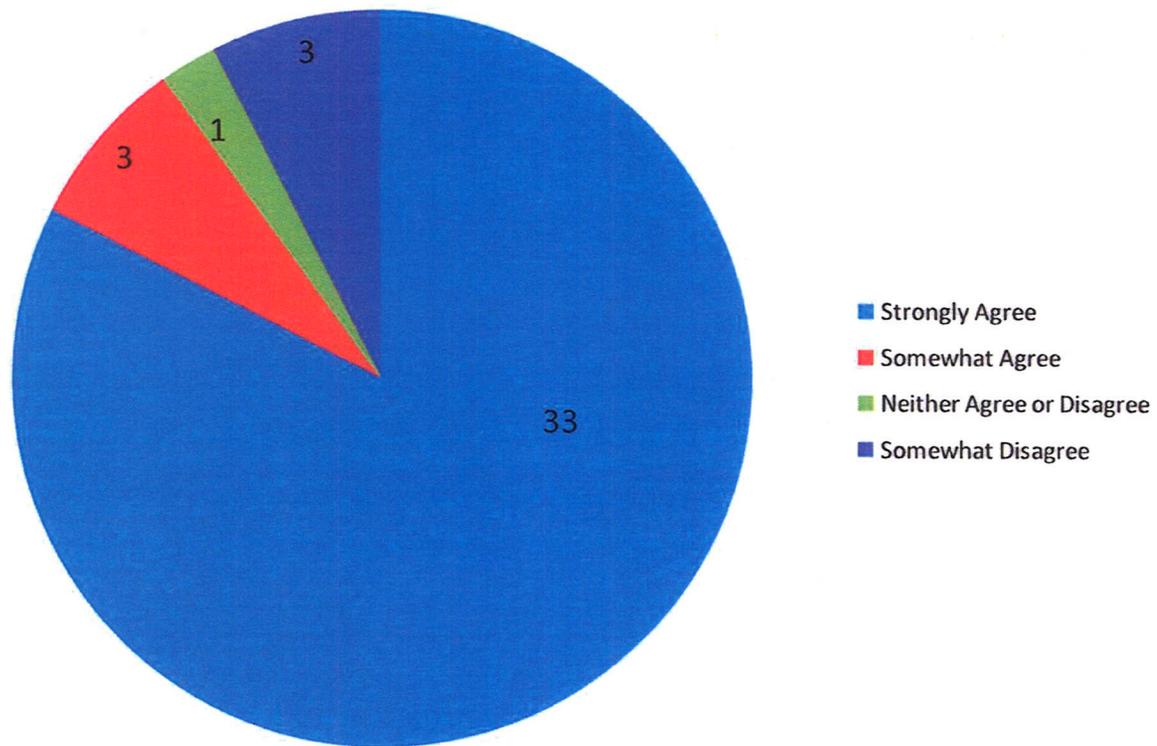
**Have you Corresponded with the Department about
a Member Complaint Within the Last 12 Months?**



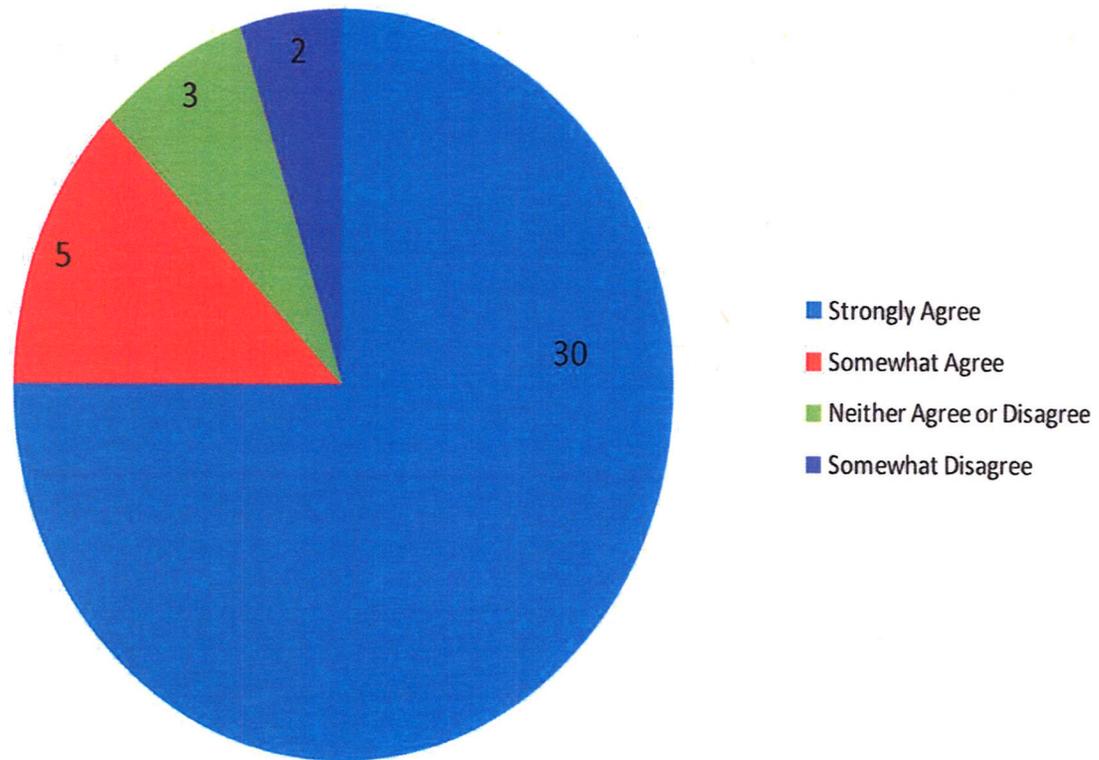
Requests for Information were Reasonable



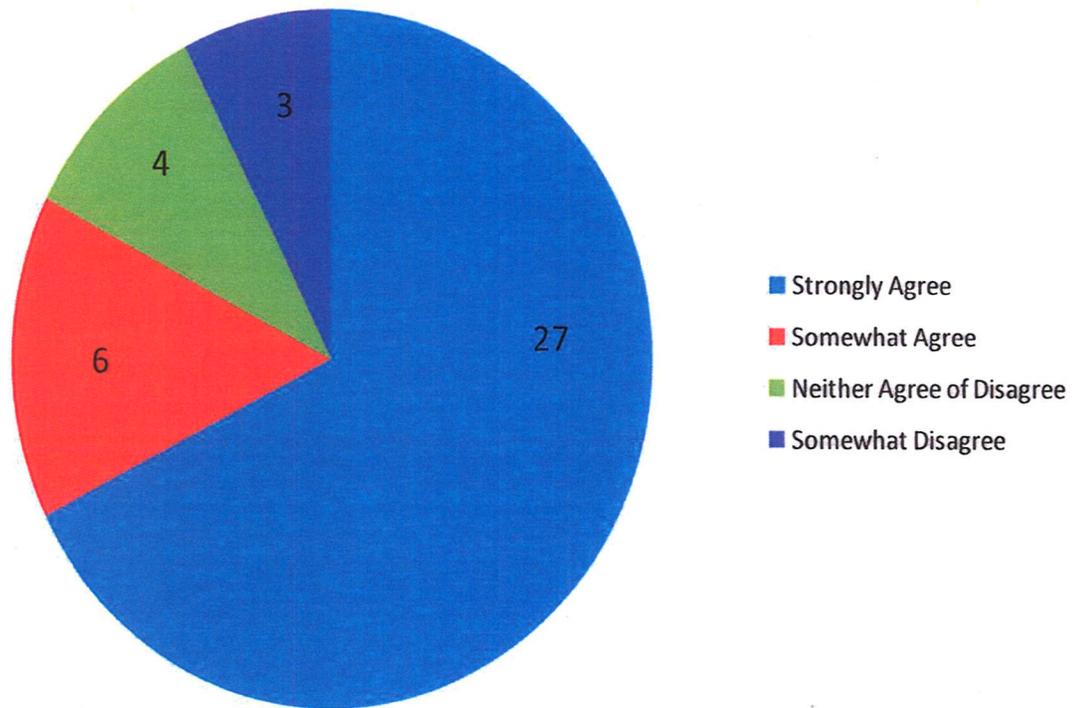
The Issue was Handled in a Professional Manner by the Department



The Department's Findings were Based on a Reasonable Interpretation of Applicable Law



The Department's Suggestion for Resolving the Matter was Reasonable



DEPARTMENT WEBSITE

DEPARTMENT WEBSITE

The Department's Website is Informative and Easy to Use

The Atmosphere and Amenities of the Austin Office are Conducive to Conducting Business with the Department

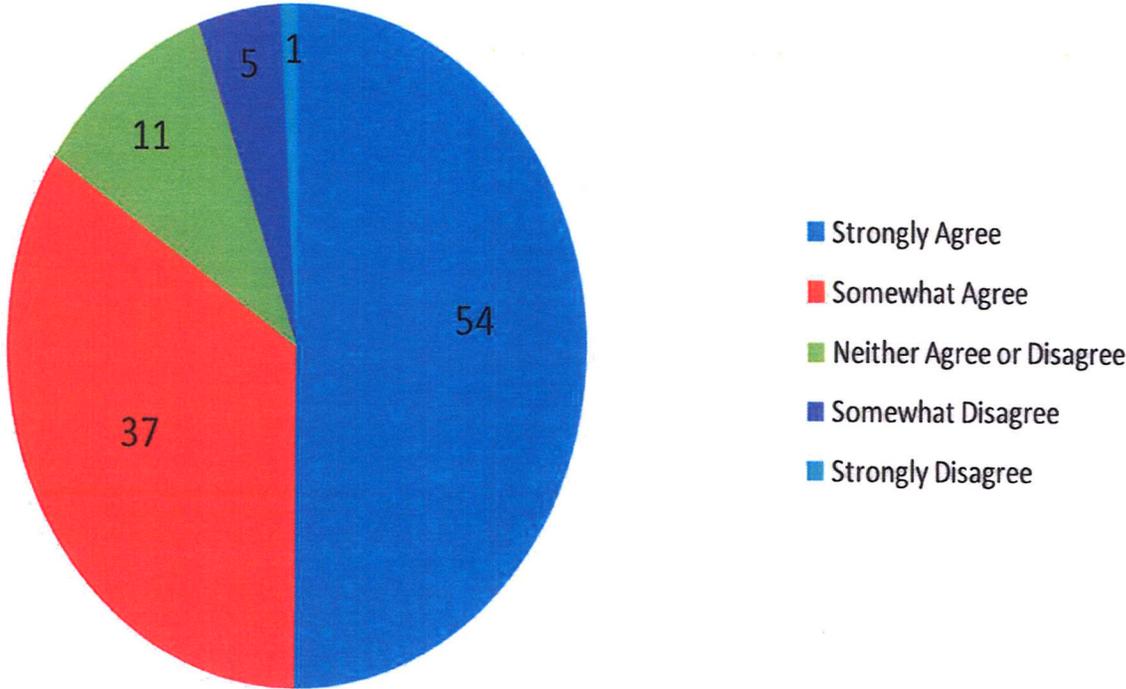
Customer Responses

Strongly Agree	54
Somewhat Agree	37
Neither Agree or Disagree	11
Somewhat Disagree	5
Strongly Disagree	0

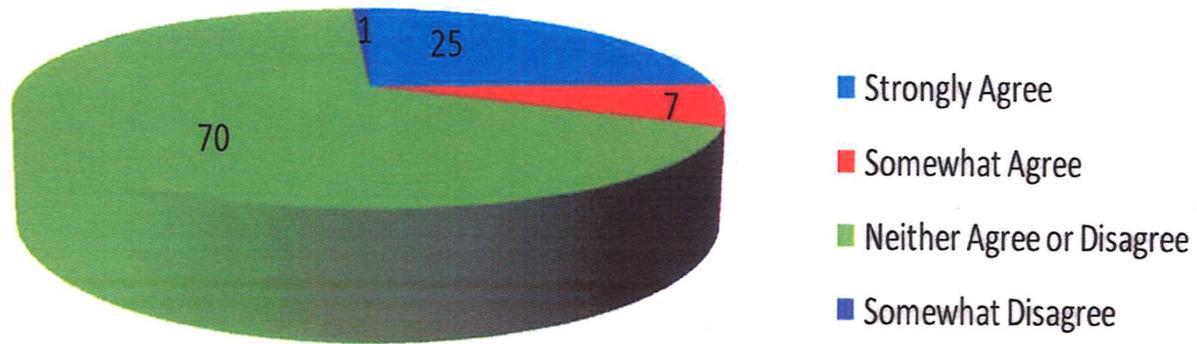
Customer Responses

Strongly Agree	25
Strongly Agree	7
Neither Agree or Disagree	70
Somewhat Disagree	1
Strongly Disagree	0

The Department's Website is Informative and Easy to Use



The Atmosphere and Amenities of the Austin Office are Conducive to Conducting Business with the Department



DEPARTMENT OFFICES

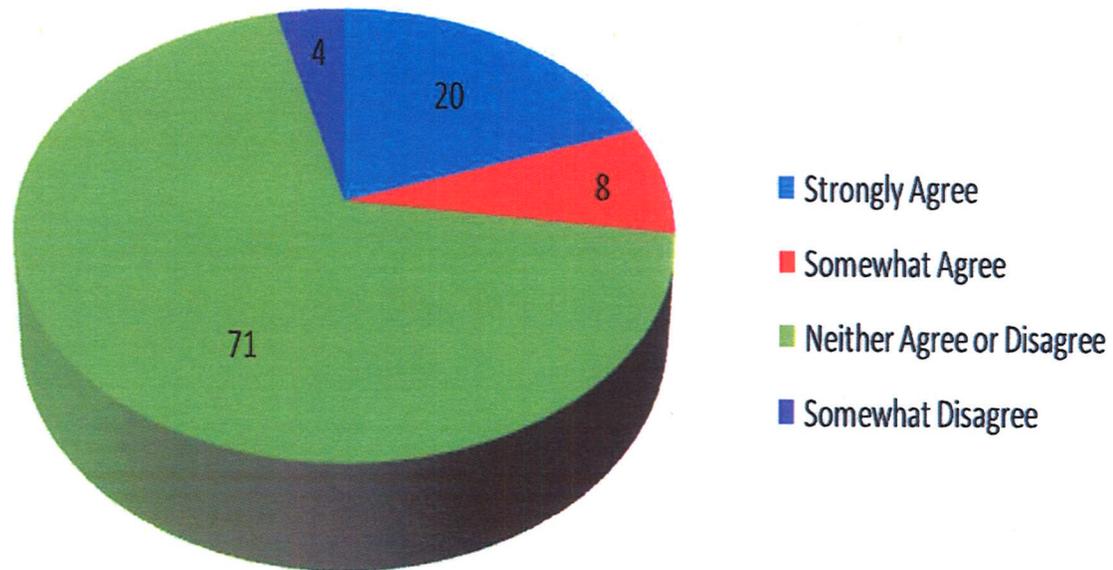
DEPARTMENT OFFICES

Parking was Adequate and Easily Accessible

Customer Responses

Strongly Agree	20
Somewhat Agree	8
Neither Agree or Disagree	71
Somewhat Disagree	4
Strongly Disagree	0

Parking was Adequate and Easily Accessible



LEVEL OF SATISFACTION

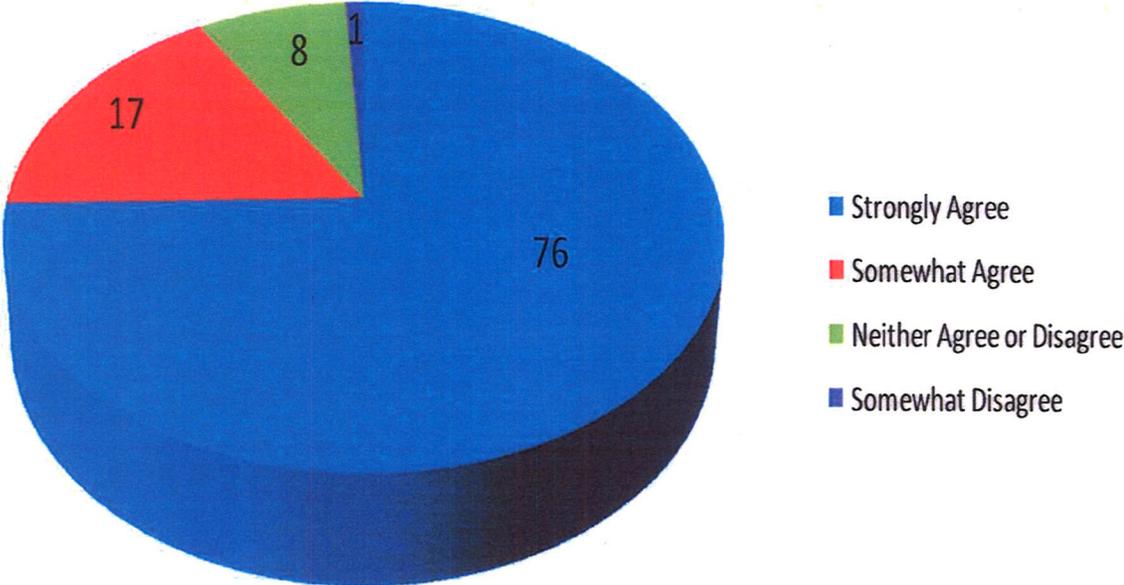
LEVEL OF SATISFACTION

Overall, the Department Provides my Credit Union with Quality Service

Customer Responses

Strongly Agree	76
Somewhat Agree	17
Neither Agree or Disagree	8
Somewhat Disagree	1
Strongly Disagree	0

Overall, the Department Provides My Credit Union with Quality Service





CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Daniel J. Buckley
Deputy Commissioner

May 23, 2014

Sent electronically to: regcomments@ncua.gov

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

RE: Prompt Corrective Action—Risk Based Capital; RIN 3133-AD77

Dear Mr. Poliquin:

This is in response to the Notice of Proposed Rulemaking issued by the National Credit Union Administration (NCUA) requesting comments on the proposal to make various revisions, including replacing the agency's current risk-based capital requirements with new risk-based capital requirements for federally-insured "natural person" credit unions. In general, the proposed revisions would require higher minimum levels of risk-based capital for credit unions with concentrations of assets in real estate loans, member business loans, or high levels of delinquent loans.

The Department generally supports the efforts of the NCUA to modernize the existing regulation and construct a more sufficient regulatory capital system. We also appreciate the difficulties associated with the development of an ideal risk-based plan and acknowledge the work that has gone into developing the proposed structure. When credit unions fail by taking excessive risks without commensurate capital to back them up, federally insured credit unions pay for those losses through the National Credit Union Share Insurance Fund (NCUSIF). If the riskiest credit unions are required to choose between holding more capital or shedding risky assets in order to comply, then all other credit unions under this proposal face less of a future threat of special assessments and premiums. Nevertheless, the Department welcomes the chance to make constructive comments on certain aspects of the proposal.

In commenting on the proposed revisions, the Department wishes to emphasize to the NCUA the importance of state participation in the process of risk-based capital. Of particular concern are the discretionary actions that may be undertaken by the NCUA, including both the 1,250 percent risk-weight for certain asset backed investments (Part

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
May 23, 2014
Page 2

702.104) and the individual minimum capital requirement (Part 702.105). The Department urges the NCUA to continue the settled practice of coordinating supervisory actions with state supervisors. State supervisors' familiarity with their institutions and local conditions may exceed that of the NCUA and is a resource that should not be ignored. Consultation with state supervisors from the earliest stages of the process leading to a discretionary action offers the best opportunity to fashion an appropriate and effective response to problems. This is true no matter which authority under the Federal Credit Union Act the agency is acting under. The Department, therefore, requests the final regulation include more specific language as to the need and desirability for cooperation with the chartering authority from the very onset of any potential discretionary action.

Investments in CUSOs

While the Department understands and appreciates that there have been CUSO investment losses, NCUA's repeated and intense regulatory scrutiny of CUSOs is becoming counter-productive in that it will drive the activity into unregulated third-party service providers. As recently as November 2013, NCUA finalized a CUSO regulation that dramatically expanded NCUA's oversight of these entities. Purportedly that regulation addressed "material risks" that CUSOs posed by creating registry and reporting requirements focusing on "complex or high-risk" CUSOs. As a result, it was presumed that any significant risk that a credit union assumed from a CUSO investment would be transparent to NCUA; however, this proposal seeks to impose an additional, one-size fits all, 250 percent risk-weight on the cash investment in a CUSO. The Department does not believe that the excessively high 250 percent risk weight reflects a fair assessment of the actual risk held by most credit unions. Rather than treating all CUSOs like they are a great risk to each credit union, if NCUA believes that it has identified specific problem situation that poses significant risk, the agency should use its existing supervisory authorities to address the specific risky behavior. Therefore, the Department encourages NCUA to consider a bifurcated risk weighting structure for CUSOs that has no individual weighting greater 100 percent.

1,250 Percent Risk-Weight

The proposal gives NCUA broad discretion to require extra capital on asset-backed investments for which NCUA believes the credit union is unable to demonstrate a comprehensive understanding. While we agree with, and support the notion that such an investment could represent a safety and soundness concern, the Department is not convinced that this justifies calling upon additional regulations to do the work of quality supervision and the enforcement of existing regulations. The existing laws and

Gerard Poliquin
Secretary of the Board
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regulations governing investments provide sufficient guidance and limitations. If a specific investment type is deemed inappropriate for credit unions collectively or individually, then current regulations and supervisory powers exist to limit or prohibit this type or class of investment. The arbitrary assignment of a risk weight based on a supervisory concern does little to deter the activity or remove the risk. It appears punitive in nature and will be based on opinions, not necessarily facts. Any revelation that a credit union may be making imprudent investments should be used by federal and state agencies as a trigger for increased supervisory scrutiny not rationale to promulgate more regulations. Section 206 of the Federal Credit Union Act confers upon NCUA considerable supervisory and enforcement authorities that can and should be utilized to mitigate this type of perceived risk to the National Credit Union Share Insurance Fund at individual credit unions.

At a minimum, the state supervisors' views are an important factor to be considered in connection with a 1,250 percent capital surcharge. Examinations of state credit unions are typically done jointly or independent of federal insurance reviews. The proposal does not specify at what level within NCUA this determination will be made, or whether NCUA would conduct an on-site review before making such a determination so it is possible that an independent state exam may, in fact, be the most recent evaluation. Through the establishment of excessive risk weighting factors, the NCUA could significantly reduce the value of a state charter, by effectively creating a competitive disadvantage for state chartered institutions operating within the confines of authorized state laws and rules. The Department urges NCUA to establish specific procedures for consultation with the states prior to imposing the capital surcharge on a state credit union.

Individual Minimum Capital Requirement (IMCR)

The Department believes NCUA already has the authority to reclassify a credit union into the next lower capital category under Prompt Corrective Action based on the existence of an unsafe or unsound condition or practice at a credit union. It is the Department's view that this existing authority already provides NCUA with sufficient tools to force additional capital retention under extraordinary circumstances.

The Department has serious reservations with the seemingly unrestrained circumstances that could justify the imposition of an IMCR. As currently drafted, this provision provides NCUA with complete discretion to demand higher capital levels from any credit union at any time. Although we are generally supportive of regulatory flexibility to handle varied circumstances, the Department suggests that such expansive discretion is unnecessary. For all practical purposes the NCUA is seeking unchecked authority to

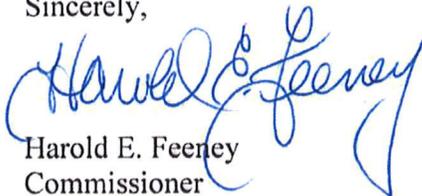
Gerard Poliquin
Secretary of the Board
National Credit Union Administration
May 23, 2014
Page 4

subjectively establish capital requirements that could materially alter the natural dynamic tension between industry innovation and supervisory aspirations to maintain a safe and sound credit union system. Sufficient regulatory authority exists to protect the NCUSIF, the addition of IMCR is overreaching and absent clear standards, delineated administrative processes, transparency, and a legitimate appeals process, it should be removed from the final rule.

In addition, the Department wishes to accentuate the importance of coordination with state supervisors in connection with the imposition of a higher capital standard than the established regulatory threshold. The Department request the regulation include specific language as to the need and desirability for cooperation and coordination with state supervisors from the very onset of the process.

The Department hopes that these comments will assist NCUA in refining the proposed revision and appreciates the opportunity to comment on these issues.

Sincerely,

A handwritten signature in blue ink that reads "Harold E. Feeney". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Harold E. Feeney
Commissioner

HEF/iv



**STATE OFFICE OF RISK MANAGEMENT
WILLIAM P. CLEMENTS, JR. BUILDING, 6TH FLOOR
P.O. BOX 13777, AUSTIN, TEXAS 78711
(512) 475-1440**

May 5, 2014

Mr. Harold E. Feeney
Executive Director
Credit Union Department
914 East Anderson Lane
Austin, TX 78752-1604

Agency#: 469

Re: On-Site Consultation (OSC)

Dear Mr. Feeney:

The State Office of Risk Management (SORM) conducted an On-Site Consultation (OSC) of the Texas Credit Union Department on May 1, 2014. The review was conducted under the authority of Texas Labor Code, Title V, Subtitle A, Chapter 412, and was designed to assist your state agency in the development and implementation of comprehensive risk management programs that meet Risk Management for Texas State Agencies (RMTSA) guidelines.

The following observations were reviewed and discussed during the visit.

- Over the past 5 fiscal years, there have been no workers' compensation claims submitted to SORM.

Noteworthy observations made during this survey include the following:

- After conducting a risk assessment of the physical security conditions surrounding their building on East Anderson Lane, CUD decided to mitigate certain risks by constructing a new parking lot to their rear of the building. This construction, along with the appropriate lighting, should contribute to a reduction of the likelihood of incidents occurring associated with criminal elements in the area, as well as employee and public access to the building.

- After conducting a risk assessment of potential agency losses with regard to employee retention, CUD decided to mitigate this risk through improved continuing education opportunities and increased remuneration considerations for examiners.
- CUD has designated a Business Continuity Planner, and that employee is working toward her certification as a FEMA Professional Continuity Practitioner (Continuity Excellence Series Level I.) Progress is being made toward having a compliant COOP plan by the deadline.
- As part of CUD's on-boarding process, all examiners are provided with at least six months of On-the-Job training, where they are trained and supervised by experienced examiners.
- To help assess all of the potential risks associated with their building at East Anderson Lane (which CUD owns), CUD contracted with a general contractor and structural engineer to conduct a full-scale inspection of all aspects of the building's functionality. This inspection generated a comprehensive report which addressed the exterior and interior of the building, the electrical system, fire safety, security, plumbing, HVAC, and other issues. Each area was given an appropriate "life span" of how soon repairs would likely need to be done. This is an example of executive management's commitment to proactive and comprehensive agency-wide risk management.

During this consultation, SORM discussed and verified completion of recommendations generated as a result of the On-Site Consultation (OSC) conducted on October 9, 2012. The following recommendations are now **closed**:

- 13-10-02 *Fire Extinguishers (Annual/Monthly)*
 13-10-03 *Hired and Non-Owned Automobile Insurance Program*

During this consultation, SORM reviewed and discussed recommendations generated as a result of the On-Site Consultation (OSC) conducted on October 9, 2012. The following recommendation remains **open**:

- 13-10-01 *Annual Review of Policies*

As a result of this consultation, the following new recommendations are made to help maintain or improve the effectiveness of your risk management program:

- 14-05-01 Safety: Policies/Procedures: Written Office Safety Policies**
 During the consultation, it was noted that while the Credit Union Department has an otherwise excellent Employee Handbook and Policies and Procedures Manual, they are lacking some relevant topics on office safety. SORM

recommends including topics such as Safe Lifting, Electrical Safety, and Slip/Trip/Fall Prevention in the agency's written policies/procedures.
Reference: RMTSA Guidelines, Volume III, Section Two, Chapter 6, Subchapter 6.11

Note: SORM provided CUD with a template for these written policies.

14-05-02 Safety: Policies/Procedures: Driving Safety

During the consultation, it was noted that although the agency does conduct annual Motor Vehicle Record checks with the Department of Public Safety, the policies of the agency lack a formal decision-making matrix to determine what kind of driving record would be unacceptable to the agency, and what would occur if an employee's driving record was in the unacceptable range. SORM recommends that CUD consider the feasibility of establishing a risk tolerance mechanism with regard to employee driving records.

Reference: RMTSA Guidelines, Volume II, Section Two, Chapter One

Note: SORM provided CUD with a template for a risk tolerance mechanism, as provided by One Beacon Insurance Group.

14-05-03 Safety: Fire Safety: Electrical Loads

During the consultation, it was noted that due to the age of the current HVAC system, some employees use space heaters in their workspaces for comfort during winter months. SORM recommends that CUD request that Texas Facilities Commission, with whom CUD contracts for maintenance of this building, approve in writing all such appliances to ensure that they are all UL-rated and do not exceed the voltage capacity of the electrical system.

Reference: RMTSA Guidelines, Volume III, Section Two, Chapter 6, Subchapter 6.4

We request that the appropriate staff review this document, specify the actions that the Credit Union Department plans to take, and project the estimated date of completion for each recommendation. Please provide your response to me by **June 5, 2014** via fax, U.S. mail, or email (frank.marcopolos@sorm.state.tx.us). My direct fax number is (512) 370-9027.

Please convey my sincere appreciation to Ms. Stacey McLarty, Ms. Linda Clevlen, and the rest of the staff at the Credit Union Department for their cooperation and assistance during the visit. If you have any questions or concerns regarding the information detailed in this report, please call me at (512) 936-1573.

Sincerely,



Frank J. Marcopolos, ARM
Risk Management Consultant
State Office of Risk Management

Cc: Ms. Stacey McLarty, Risk Manager/Deputy Executive Director, Credit Union Department

ACTION PLAN

Agency Name: Credit Union Department

Date of Visit: 5/1/2014

Agency Number: 469

SORM Consultant: Frank Marcopolos

Recommendation: 14-05-01 **Safety: Policies/Procedures: Written Office Safety Policies**

Details: During the consultation, it was noted that while the Credit Union Department has an otherwise excellent Employee Handbook and Policies and Procedures Manual, they are lacking some relevant topics on office safety. SORM recommends including topics such as Safe Lifting, Electrical Safety, and Slip/Trip/Fall Prevention in the agency's written policies/procedures.

Reference: RMTSA Guidelines, Volume III, Section Two, Chapter 6, Subchapter 6.11

Note: SORM provided CUD with a template for these written policies.

Current Status of Recommendation (check appropriate box and comment below):

- Recommendation has already been completed
Completion Date: 5/8/2014
- Will implement with a target date of completion
Target Date:
- No Plans to implement

Comments:

The Department has created Policy #502, containing written policies concerning topics such as Safe Lifting, Electrical Safety, and Slip/Trip/Fall Prevention. This policy will be included in the Department's current policy manual and will be distributed to all employees. (Enclosed)

Name:
Stacey McLarty

Title/Position:
General Counsel

Date: 5/29/2014

Recommendation: 14-05-02 Safety: Policies/Procedures: Driving Safety

Details: During the consultation, it was noted that although the agency does conduct annual Motor Vehicle Record checks with the Department of Public Safety, the policies of the agency lack a formal decision-making matrix to determine what kind of driving record would be unacceptable to the agency, and what would occur if an employee's driving record was in the unacceptable range. SORM recommends that CUD consider the feasibility of establishing a risk tolerance mechanism with regard to employee driving records.

Reference: RMTSA Guidelines, Volume II, Section Two, Chapter One

Note: SORM provided CUD with a template for a risk tolerance mechanism, as provided by One Beacon Insurance Group.

Current Status of Recommendation (check appropriate box and comment below):

- Recommendation has already been completed
Completion Date:
- Will implement with a target date of completion
Target Date:
- X No Plans to implement

Comments:

The Department analyzed the provided template for a risk tolerance mechanism, considering the risks and benefits of implementing such a plan. Given the size of the Department, the history of previous employee driving records, and the procedures already in place to ensure fair and consistent treatment of employees, the Department has determined that it will continue to address driving record issues on a case-by-case basis.

Name:

Stacey McLarty

Date: 5/29/2014

Title/Position:

General Counsel

Recommendation: 14-05-03 Safety: Fire Safety: Electrical Loads

Details: During the consultation, it was noted that due to the age of the current HVAC system, some employees use space heaters in their workspaces for comfort during winter months. SORM recommends that CUD request that Texas Facilities Commission, with whom CUD contracts for maintenance of this building, approve in writing all such appliances to ensure that they are all UL-rated and do not exceed the voltage capacity of the electrical system.

Reference: RMTSA Guidelines, Volume III, Section Two, Chapter 6, Subchapter 6.4

Current Status of Recommendation (check appropriate box and comment below):

- Recommendation has already been completed
Completion Date: 5/12/2014
- Will implement with a target date of completion
Target Date:
- No Plans to implement

Comments:

On 5/12/2014, the Department placed a request for the Texas Facilities Commission to perform the recommended inspection. On 5/15/2014, TFC informed the Department that they were unable to perform such an inspection. At this time, the Department has determined that employees may continue to use small, UL-rated portable heaters for occasional office use.

Name:

Stacey McLarty

Date: 5/29/2014

Title/Position:

General Counsel

Recommendation: 13-10-01 Annual Review of Policies

Details: During the consultation, it was noted that a recommendation made on 10/9/2012 regarding an annual review of Department policies remained unresolved.

Current Status of Recommendation (check appropriate box and comment below):

- Recommendation has already been completed
Completion Date:

- X Will implement with a target date of completion
Target Date: 9/1/2014

- No Plans to implement

Comments:

The Department expects to complete a review of all policies and procedures by 9/1/2014. The Department will document the completion date of the review and will review all policies annually hereafter.

Name:

Stacey McLarty

Date: 5/29/2014

Title/Position:

General Counsel



CREDIT UNION DEPARTMENT POLICY

POLICY #502

May 8, 2014

OFFICE SAFETY

Slips, Trips, and Falls

Slips, trips, and falls account for 15% of all accidental deaths, second only to automobile fatalities. What is the difference between a slip, trip, or fall? Very little, if you are the victim. The pain is the same, so it really doesn't matter which of the three caused your accident, right? Actually, though, there really are some significant differences.

Slips occur when there is too little friction or traction between your feet and the walking surface. The most common causes of slips are wet surfaces, ice, or other weather hazards, spills, and poor tread on footwear. Preventive measures include:

Wet surfaces: Shorten your stride, walk with feet pointed out slightly, and make wider turns.

Spills: Clean up immediately. If you are unfamiliar with the contents of the spill, contact your supervisor.

Weather hazards: Walk more slowly so you can react to traction changes. Wear slip resistant shoes or boots, and dry off shoes as soon as practical after entering a building (wet shoes on dry floors are as dangerous as dry shoes on wet floors). Wear sunglasses on sunny winter days so you can more easily see slippery areas.

Poor tread on footwear, or generally poor traction: Wear slip resistant footwear, apply abrasive strips to smooth walking surfaces, post warnings.

Trips commonly occur when your foot strikes an object and your momentum throws you off balance. To minimize the potential for this type of injury:

- Do not allow carried packages to obstruct your view.
- If glasses fog due to atmospheric changes, clear them immediately.
- Use only proven walkways.
- Close desk and file drawers when not in use.
- Report burned out or missing lights.
- Be aware of elevator threshold positions.
- Report any uneven or broken pavement, sidewalks, or handrails.

Falls usually take place from one level to another. One of the most common examples of this type of injury involves falling down stairs. Another involves using chairs as ladders. Preventive measures include:

- NEVER stand on a chair to reach a high object. Always use a ladder.
- When using ladders, select the proper type and size, and use it properly. TEA offers ladder training if you are unsure.
- Walk up and down stairs, and never jump from the last step.
- Use handrails.
- Walk.
- Report any unsafe conditions.

Good housekeeping is an important element of accident prevention in offices. Poor housekeeping may lead to fires, injuries to personnel, or unhealthful working conditions. Mishaps caused by dropping heavy cartons and other related office equipment and supplies could also be a source of serious injuries to personnel.

- Passageways in offices should be free and clear of obstructions. Proper layout, spacing, and arrangement of equipment, furniture, and machinery are essential.
- All aisles within the office should be clearly defined and kept free of obstructions.
- Chairs, files, bookcases and desks must be replaced or repaired if they become damaged. Damaged chairs can be especially hazardous.
- Filing cabinet drawers should always be kept closed when not in use. Heavy files should be placed in the bottom file drawers.
- Materials stored within supply rooms must be neatly stacked and readily accessible by adequate aisles. Care should be taken to stack materials so they will not topple over. Under no circumstances will materials be stacked within 18 inches of ceiling fire sprinkler heads.
- Materials shall not be stored so that they project into aisles or passageways in a manner that could cause persons to trip or could hinder emergency evacuation.
- Spills, including liquids and debris, should be cleaned up immediately or cordoned off to prevent someone from slipping, tripping, or falling.

Electrical Safety

Electric cords should be examined on a routine basis for fraying and exposed wiring. Particular attention should be paid to connections behind furniture, since files and bookcases may be pushed tightly against electric outlets, severely bending the cord at the plug. Electrical appliances must be designed and used in accordance with UL requirements. All electrical appliances (including space heaters) should approved for use with the electrical circuits they will be plugged into.

Use of Extension Cords

- Extension cords shall only be used in situations where fixed wiring is not feasible, and for a temporary period of time.
- Extension cords shall be kept in good repair, free from defects in their insulation. They will not be kinked, knotted, abraded, or cut.
- Extension cords shall be placed so they do not present a tripping or slipping hazard.
- Extension cords shall not be placed through doorways having doors that can be closed, and thereby damage the cord.
- All extension cords shall be of the grounding type (“three-conductor”). Ground prongs should NEVER be removed.

- Never plug one power strip into another power strip. This is called “daisy-chaining” and it can cause a major electrical fire.

Back Safety

Back disorders are listed in the “top ten” leading workplace injuries published by the National Institute of Occupational Safety and Health. They account for 27 percent of all nonfatal injuries and illnesses involving days away from work. According to recent injury figures from the Bureau of Labor Statistics, each year there are over 880,000 cases of back injuries. In most sectors of industry, back injuries now rank either second or third overall (Bureau of Labor Statistics.)

Over our lifetimes, 8 out of 10 people will experience a back injury and back pain. Most back injuries are painful, debilitating, and life changing.

What Can Cause Back Pain?

- Improper lifting technique
- Picking up oversize loads
- Using back belts improperly
- Posture and poor alignment
- Awkward stretches while reaching
- Being in poor physical condition
- Static work postures

Prevention

Preventing a back injury is much easier than repairing one. Because your back is critically important to your ability to walk, sit, stand, and run, it’s important to take care of it, so here are a few basic rules:

- Exercise to strengthen your back and reduce stress
- Lose excess weight
- Maintain good posture – all the time!

Some Tips

Before you lift that box, or tool, or piece of equipment, take a moment to consider your action:

- Do you need to lift the item manually?
- How heavy is it?
- Is it packed correctly?
- Is it easy to reach the load?
- Where are you moving the item from?
- Where does it have to go?
- What route do you have to follow?

When Lifting:

1. Keep feet parted for stability
2. Squat down bending at the knees (not your waist). Tuck your chin while keeping your back as vertical as possible.
3. Get a firm grasp of the object before beginning the lift.
4. Begin slowly lifting with your LEGS by straightening them. Never twist your body during this step.
5. Once the lift is complete, keep the object as close to the body as possible.

- Pace yourself and get help before you try to lift a heavy load.
- Use mechanical lifting devices to lift and/or move heavy objects.

- Slide heavy materials, if possible, rather than lifting them. Planks and rollers can make this job easier.
- Storing materials at least 12 inches off the ground, can minimize having to lift directly off the ground.
- Never try to catch heavy falling objects.

And....

- To reduce the risk of injury during standing work, remember to move around, take breaks and stretch, and watch your posture.



CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Daniel J. Buckley
Deputy Commissioner

April 3, 2014

Ralph McClendon, Audit Manager
State Auditor's Office
P.O. Box 12067
Austin, Texas 78711-2067

RE: Hotline Complaint 14-2914

Dear Mr. McClendon:

This letter is in response to your correspondence of March 28, 2014 and more specifically to a complaint filed by Rhonda Neel concerning the conservatorship of Texans Credit Union, Richardson, Texas. It is our understanding that Ms. Neel is troubled by the length of the conservatorship and the lack of opportunity for the credit union's members to voice their concerns.

An understanding of the status of Texans Credit Union requires a recap of the pertinent facts and details:

- The credit union was placed in federal conservatorship on April 15, 2011. As a result, the National Credit Union Administration (NCUA), an agency of the federal government, assumed control of the credit union in order to reverse downward trends and ensure its financial stability and safe and sound operation.
- The decision to federally conserve the credit union enabled the institution to continue to serve its members with new management in place, while correcting previous financial and operational weaknesses. Prior to the conservatorship, the credit union's financial condition had been deteriorating sharply, including a declining net worth position, increasing loan delinquency, rising levels of real estate owned, and operating losses.
- The credit union members' deposits have always been safe. Individual accounts are federally insured up to \$250,000. The credit union remained open and services to members continued uninterrupted.
- The top priority of the conservatorship is to protect the interests of the credit union's members. NCUA has expertise in diligently managing this type of situation and acts in the best interest of the members. NCUA's main concern during the conservatorship is to make certain that members continue to receive financial services from a safe and sound credit union.

- NCUA has three options with respect to the credit union:
 - Maintain control until the credit union's financial condition is back to normal and give it back to the members to elect a new board;
 - Liquidate the credit union and disperse assets to the members; or
 - Seek another financial institution to partner with the credit union through a merger or purchase and assumption process.
- NCUA has provided the credit union with a \$60 Million Subordinated Capital Note to avoid the credit union being declared insolvent.
- NCUA has filed suit against the former CEO of the Credit Union, accusing him of breach of fiduciary duty and gross negligence that led to the conservatorship.
- The financial condition of the credit union has improved under the conservatorship, however, the credit union is still significantly undercapitalized as that term is defined in federal statutes.

The substance of Ms. Neel's complaint primarily involves alleged unspecified conduct by the conservator of Texans' Credit Union. When the Department initially received correspondence from Ms. Neel on March 25, 2014, the information was reviewed and found to contain insufficient evidence of a violation under the Department's jurisdiction to pursue further investigation. The closing letter to Ms. Neel explained that, if she could supply further information supporting a violation to the Department, her inquiry would be reconsidered. She was also advised that the Department's review of her complaint addresses only matters under this agency's jurisdiction and does not prevent any party from pursuing a remedy to which they may be entitled. Further, Ms. Neel was informed about the credit union's duty to provide certain information to members, either annually or upon request.

With respect to Ms. Neel's concern that "...the members have not been allowed to hold a meeting nor to weigh in on the selection of new officers or board members." It is important to remember that the Credit Union Department is not the conservator of Texans' Credit Union and is not responsible for the current management or operations of this financial institution. Until such time as the conservator has rehabilitated the credit union or exercised one of its other options previously discussed, NCUA has possession and control of the business of the credit union. As a result, annual credit union meetings have been suspended until such time as it is appropriate to restore a member-elected board.

Ralph McClendon, Audit Manager
State Auditor's Office
April 3, 2014
Page 3

It is worth noting that nothing precludes Ms. Neel from organizing and holding a meeting with other credit union members on her own. Ms. Neel has the right under the First Amendment of the United States' Constitution to meet with other interested parties to organize and address concerns or grievances. She may even choose to invite representatives of the credit union conservatorship to a meeting for the purposes of airing grievances and negotiating resolutions to member concerns. There is no evidence that Ms. Neel has attempted to organize such a meeting. There is no evidence that Texans' Credit Union or the conservatorship by NCUA has attempted to impede Ms. Neel's rights of lawful assembly or association.

It is not clear from Ms. Neel's complaint what she means by her account being "held hostage," nor is it clear what she means about not being "consulted about [her] own money;" however, individual credit union members, such as Ms. Neel, are free to access the funds in their accounts, according to their membership agreements; the conservatorship of the credit union was implemented to eliminate barriers to members' accessing their share and deposit accounts. Ms. Neel even has the option to withdraw all funds from the credit union, close all her accounts, and transfer to a different financial institution, if she is dissatisfied with Texans' services.

The Credit Union Department is not pursuing administrative action against the credit union or any former or current board member or employee at this time. This does not preclude the possibility of the Department taking appropriate administrative actions in the future, if the Department obtains sufficient evidence of a violation under its jurisdiction. As previous indicated, a lawsuit has been filed against the former CEO of the credit union and NCUA may pursue action against other individuals, as well; the Department is not aware of any final settlement agreement or judicial decision in these matters.

It is also not clear what conduct of the conservators Ms. Neel has observed, nor did she explain the basis for her belief that conservators' conduct is "unethical and undesirable." The Department believes the conduct of federal employees may fall outside this agency's jurisdiction. Even if this were a matter under the Department's jurisdiction, the Department would need more information in order to proceed with an investigation.

And finally, Ms. Neel appears to be confused when she states that "the law guarantees our right to have meetings and visibility," referring to her desire to have a meeting to complain about the conservator's management of the credit union. As stated above, a federal conservator does not appear to have any legal duty to hold meetings during the conservatory period or to hold annual meetings or provide other forums for the purposes of hearing or addressing member complaints.

Ralph McClendon, Audit Manager
State Auditor's Office
April 3, 2014
Page 4

We trust this is responsive to your request. Should you need additional information or want to discuss this matter in more detail, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold E. Feeney". The signature is written in a cursive, flowing style with a large initial "H" and "F".

Harold E. Feeney
Commissioner

HEF/iv



RECEIVED
CREDIT UNION
DEPARTMENT

2014 MAR 31 PM 1:15

March 28, 2014

Mr. Harold E. Feeney, Commissioner
Credit Union Department
914 E Anderson Lane
Austin, TX 78752-1699

Re: Hotline Complaint: 14-2914

Dear Mr. Feeney:

The State Auditor's Office's (SAO) Special Investigations Unit receives information from the citizens of Texas through our reporting system (telephone hotline, Web site, and correspondence). Through that reporting system, citizens provide information regarding suspected fraud, waste, abuse, and/or inefficient operations at state agencies or higher education institutions.

Enclosed is a copy of a complaint that we received regarding allegations of improprieties at the Credit Union Department. We have reviewed the information and determined that it should be referred to you for further review and/or possible action. Based on a review of the response that we receive from you, we will determine whether any further action is required, such as a follow-up audit or an investigation of the subject matter of the complaint.

We look forward to your written response to this referral within 90 days. If you have any questions or would like to discuss this matter, please contact me at (512) 936-9500.

Sincerely,

Ralph McClendon, CISA, CCP, CISSP
Audit Manager

Enclosure

Robert E. Johnson Building
1501 N. Congress Avenue
Austin, Texas 78701

P.O. Box 12067
Austin, Texas 78711-2067

Phone:
(512) 936-9500

Fax:
(512) 936-9400

Internet:
www.sao.state.tx.us

S U S A N

C O M B S

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

P.O. Box 13528 • AUSTIN, TX 78711-3528



Subject: SB1681 State Agency Governing Body Members Questionnaire

Pursuant to Texas Gov't Code §2262.053, the Training and Certification Program (TCP), as part of the Texas Procurement and Support Services (TPASS), administers a system of training, continuing education and certification for state contract management personnel. Each state agency must ensure that the agency's personnel complete the training and become certified under this section.

In addition, S.B. No. 1681 requires all members of the governing body of a state agency to complete an abbreviated contract management course. This does not apply to a state agency that does not enter into any contracts.

All state agencies that have a governing body must complete the information requested below and forward to lisa.vega.tpass@cpa.state.tx.us by **April 30, 2014**.

Agency Name

Agency No

Provide an agency point of contact should TCP have any questions.

Name

Phone #

Email Address

Provide name(s) of member(s) requiring training and city of where member resides. **If not applicable, form must still be submitted denoting why it does not apply, i.e. Agency does not enter into any contracts or Agency does not have a governing body.**

Please contact the Training and Certification program with any questions, (512) 305-9813 or (512) 463-5355.

Texas Government Code

Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The comptroller shall adapt the program developed under Section 2262.053 to provide an abbreviated program for training the members of the governing bodies of state agencies. The training may be provided together with other required training for members of state agency governing bodies.

(b) All members of the governing body of a state agency shall complete at least one course of the training provided under this section. This subsection does not apply to a state agency that does not enter into any contracts.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 4, eff. November 1, 2013.



Requirements for Contract Managers

Contract Manager Training & Certification

Pursuant to Gov't Code §2262.0535, the Texas Procurement and Support Services (TPASS) administers a system of training, continuing education and certification for state agency contract management personnel.

Each state agency shall ensure that the agency's contract managers complete the training and certification developed under this section. Per S.B. No. 1681, all members of the governing body of a state agency shall complete an abbreviated contract management course.

The Comptroller's office provides training for members of governing bodies in accordance with Texas Government Code §2262.0535. Each state agency must independently determine who qualifies as a member of a governing body for the agency. Any such determination requires studying the enabling statutes and any other applicable law regarding the particular agency at issue. If you have questions about who in your agency is required to complete this training for governing bodies, please consult your agency's legal counsel. SB1681 State Agency Governing Body Members Questionnaire (DOC)

In addition to state agencies; political subdivisions and/or CO-OP's are welcomed to participate in the training and certification program. Examples of CO-OP entities include school districts, police, fire departments, community colleges and some city and county governments. Visit website for a full list of the State of Texas CO-OP list:

<http://www.window.state.tx.us/procurement/prog/coop/coopmemb/>

Who Should Complete the Training?

Visit website www.hr.sao.state.tx.us/Compensation/JobDescriptions.aspx for SAO classifications as a reference to help identify individuals who are required to receive the TPASS contract management training. Use "**Contract Manager**" in the "Filter Descriptions" box then click the "Filter" button.

In addition, the following tasks may help identify individuals who are required to take TPASS's contract management training.

- Develops and/or interprets rules, policies, or procedures regarding contract management or contract administration.
- Recommends the development of new contracts based on end-user requirements.
- Develops contracts by identifying needs, analyzing resources, describing services to be rendered, and negotiating pricing and other contract features/terms.
- Coordinates and facilitates the activities of a Contract Management team.
- Manages contracts using project management tools (i.e. work breakdown structures, GANTT charts, Performance Evaluation and Review Technique (PERT) charts, Critical Path Method (CPM), Microsoft (MS) Project, etc.)
- Prepares and presents reports regarding agency contracts by compiling, reviewing, and analyzing data and reporting to agency management and the Legislature.
- Coordinates the risk assessment process for contract planning and monitoring.
- Mitigates risks by addressing potential threats during contract development.
- Leads negotiations for major contracts.
- Inspects and/or audits contractors to ensure compliance with contract terms and conditions.
- Monitors contractor performance.
- Mediates and/or resolves contract related protests or disputes.
- Reviews and approves (in conjunction with the end user), all change orders.
- Cancels or terminates contracts.
- Provides guidance to agency staff and the community regarding contract administration policies, and procedures.
- Identifies training needs and provides training and technical assistance to clients, boards, or public entities during the contracting process in order to comply with statutes, rules, and policies.
- Continually refines best practices guidelines for contract management.

Training and Certification Requirements

The program contains three (3) levels of training and one (1) level of formal certification.

- *Complete the 3 levels of training
- Apply for testing
- Score a 70+
- Apply for certification

*Visit website for current course titles and descriptions:

<http://www.window.state.tx.us/procurement/prog/training-cert/cmt/training/classdesc/>

Individuals who have earned a nationally recognized professional certification in a specific subject matter may be exempted from taking some of TPASS's Contract Manager Training (CMT) courses. Visit website for equivalent training:

http://www.window.state.tx.us/procurement/prog/training-cert/cmt/training/equivalent_training/
for those entities recognized by TPASS as National Organizations.

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COMMITTEE REPORT

The Rules Committee will report on their activities and recommendations to the Commission.

RECOMMENDED ACTION: The Department requests that the Commission accept the Committee's report as presented.

RULES COMMITTEE

The Rules Committee is a standing committee of the Commission. It has been charged with the managing the review and development of Commission rules and, as appropriate, propose any legislative changes that may be necessary to preserve the attractiveness of a Texas charter.

COMMITTEE MEMBERS

- *Rob Kyker, Chair*
- *Sherri B. Merket*
- *Allyson “Missy” Morrow*
- *Kay Stewart*
- *A. John Yoggerst*
- *Manuel “Manny” Cavazos, Ex-Officio*

The Rules Committee met on June 19, 2014, in a public meeting to discuss a number of items. The Committee will report on its activities for consideration and possible vote by the Commission.



CREDIT UNION COMMISSION
Rules Committee Meeting
Credit Union Department Building
914 East Anderson Lane
Austin, Texas

June 19, 2014

AGENDA

- I. Call to Order (2:00 p.m.) – Chair Rob Kyker
 - a. Ascertain Quorum
 - b. Appoint Recording Secretary
 - c. Invitation for Public Input Regarding Rulemaking for Future Consideration
- II. Receive and Approve Minutes of the Rules Committee Meeting of February 20, 2014
- III. Unfinished Business
 - a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Adopt the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification
 - b. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and Approve for Republication the Revised Proposed Amendments to 7 TAC Section 91.502.
- IV. New Business
 - a. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit)
 - b. Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending
 - c. Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three percent fee limitation: Section 50(a)(6a)(E)), 153.15 (Location of Closing: Section 50(a)(6)(N)), and 153.51 (Consumer Disclosure: Section 50(g))

- IV. New Business (continued)
 - d. Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests
- V. Discussion of and Possible Vote to Establish Date for Next Committee Meeting (October 16, 2014 at 2:00 p.m.)
- VI. Adjournment

In the event the Committee does not finish deliberation of an item on the first day for which it was posted, the Committee might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as Interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Linda Clevlen by mail, telephone, or email.

PROCEDURES FOR ADOPTING A PROPOSED RULE

1. A proposed rule is prepared by Credit Union Department staff and presented to legal counsel (Attorney General) for review.
2. The proposed rule is presented to the commission for consideration.
3. The commission reviews, amends, adopts, refers back to staff, or tables the proposed rule.
4. The proposed rule is adjusted by staff (if required), furnished to legal counsel and transmitted to the *Texas Register* for publication as a "proposed" rule.
5. A 30-day comment period follows initial publication which also is made in the Department's monthly newsletter or by a special mailing to credit unions.
6. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in the rule reverting to step four.
7. The rule is adopted as "final" and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.
8. The rule is published or announced through the Department's newsletter.

EMERGENCY RULES

Rules, which are approved by the commission for emergency adoption, are transmitted to the *Texas Register* for filing. These rules become effective immediately upon filing unless another effective date is specified. They can be effective only for 120 days with a renewal provision for an additional 60 days -- a maximum of 180 days. "Day one" is the day of filing or the date specified as the effective date. While these emergency rules are in effect, regular rules should be initiated using the normal procedure described above. The Department rarely adopts emergency rules.

PROCEDURES FOR REQUIRED RULE REVIEW

Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. To comply with this requirement, the Commission follows the procedure below:

1. Every four years, the Commission adopts and publishes a Rule Review Plan, which establishes a date for the required review of each existing rule.
2. At least sixty days prior to a particular rule's scheduled review date, the Department publishes notice in the Newsletter reminding interested persons of the review and encouraging comments on the rules up for review.
3. Staff reviews each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule's structure as well as the specific language used is both clear and understandable.
4. If in reviewing existing rules, staff believes certain amendments may be appropriate, it provides an informal comment phase on any potential substantive amendments to all interested persons via its RuleRemarks blog on the Department's webpage.
5. After consideration of the informal comments, proposed amendments are prepared by staff and presented to the Rules Committee for review.
6. At a public meeting, the Rules Committee accepts public testimony on the each rule subject to review and considers staff recommended changes. The Committee reviews each rule and then amends the staff proposal and refers it to the Commission, refers the proposal back to staff, or refers the proposal, as recommended by staff, to the Commission.
7. The Committee's recommendation is presented to the Commission for consideration.
8. The Commission reviews, amends, approves the proposal for publications, refers it back to the Committee, or tables the proposed amendment.
9. If the Commission approves the proposal for publication, it is transmitted to the *Texas Register* for publication as a "proposed" rule amendment.
10. A 30-day comment period follows initial publication which also is announced in the Department's monthly newsletter.
11. The commission may reconsider the rule anytime after the 30-day comment period. Any comments received are considered and the rule is available for adoption as "final" if no substantive changes are made. Any substantive change will result in re-publication of the proposal.
12. The rule as amended is adopted and transmitted to the *Texas Register* for publication as a final rule. The rule becomes effective 20 days following filing for publication.
13. The amended rule is announced through the Department's newsletter and copies are made available to credit unions.

DIRECTOR ELIGIBILITY AND DISQUALIFICATION

D. (1) Discussion, Consideration, and Possible Vote to Adopt the Proposed Amendments to 7 TAC Section 91.501 Concerning Director Eligibility and Disqualification.

BACKGROUND: At its February meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.501. No written comments were received in regards to the proposed amendments.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

<p>The Credit Union Commission (the Commission) adopts amendments to <*>91.501 concerning Direction of Affairs, Director Eligibility and Disqualification with no changes to the text published in the March 7, 2014 issue of the <eti>Texas Register<et> (39 TexReg 1588).

<p>The amendments are proposed to ensure that credit unions provide for the ongoing education of directors to achieve and maintain professional competence.

<p>The Commission received no comments on these proposed changes.

<p>This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<p>The amendments are adopted under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>122.053, which sets forth the duties of directors, and under Texas Finance Code <*>122.054, which directs the commission to establish qualifications for a director.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>122.053 and 122.054.

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<*>91.501. Director Eligibility and Disqualification.

(a) Board Representation. The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) Qualifications. A member may not serve as director of a credit union if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) Director continuing education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six

(6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

**DIRECTOR/COMMITTEE MEMBER FEES, INSURANCE,
REIMBURSABLE EXPENSES, AND OTHER AUTHORIZED
EXPENDITURES**

D. (2) Discussion, Consideration, and Possible Vote to Withdraw the Previously Published Proposed Amendments to 7 TAC Section 91.502 Concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, and Approve for Republication the Revised Proposed Amendments to 7 TAC Section 91.502.

BACKGROUND: At its February meeting, the Commission approved for publication and comment in the *Texas Register* the proposed amendments to Rule 91.502. The amendments are withdrawn, modified, and proposed for republication in response to unofficial comments received on the earlier proposal.

The revised proposal clarifies that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

<p>The Credit Union Commission (the Commission) withdraws the proposed amendments to <*>91.502 concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, as previously published in the March 7, 2014 issue of the <eti>Texas Register<et> (39 TexReg 1590). In its place, the Commission proposes new amendments to the rule to address unofficial comments received on the prior proposed amendments. The amendments clarify that meeting fees which are not excessive may be paid to directors, honorary directors, advisory directors, and committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

<p>The amendments are withdrawn, modified, and proposed for republication in response to unofficial comments received on the earlier proposal, as well as to ensure that director fees are appropriate for the institution and transparent to the members.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

<p>Ms. McLarty has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p> The amendments are proposed under the provision of the Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code <*>122.062, which limits the compensation a director may receive for services.

<p>The specific section affected by the proposed amended rule is Texas Finance Code, <*>122.062.

<*>91.502. Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or ~~Directors and~~ committee members ~~may be paid reasonable fees, in accordance with written board policy,~~ for attending duly called meetings ~~at which~~ for conducting appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to annual report to membership). A credit union, however, may not pay any meeting fees to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are excessive as defined in §91.502(f). ~~Advance Notice of Payment of Fees. A credit union shall provide written notice to the Department of its intent to pay or modify director or committee member meeting fees at least 30 days prior to commencing the new or modified program. The written notice shall include a copy of the board policy, the proposed or revised fee schedule, and a description of the anticipated cost and the credit union's ability to absorb the increase in operating costs. The credit union shall provide any additional information requested by the commissioner.~~

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

- (1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;
- (2) the board of directors develops and maintains written policies and procedures regarding this matter; and
- (3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall

review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

(1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and

(2) it is in accordance with written board policies and procedures.

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MANDATORY RULE REVIEW

D. (3) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Readopt 7 TAC Sections 91.701 (Lending Powers), 91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), 91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations), 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), 91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees), and 91.720 (Small-Dollar, Short-Term Credit).

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for re-adoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed Chapter 91, Subchapter G and is recommending that no changes be made to 7 TAC Sections 91.701, 91.703, 91.705, 91.706, 91.707, 91.708, 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, 91.718, 91.719, and 91.720.

Notice of review and a request for comments on the rules in this chapter was published in the April 14, 2014 issue of the *Texas Register*. No comments were received regarding the review. The Department believes that the reasons for adopting the noted rules continue to exist.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, 91.701 (Lending Powers), §91.703 (Interest Rates), 91.705 (Home Improvement Loans), 91.706 (Home Equity Loans), §91.707 (Reverse Mortgages), 91.708 (Real Estate Appraisals or Evaluations); 91.709 (Member Business Loans), 91.710 (Overdraft Protection), 91.711 (Purchase and Sale of Member Loans), 91.712 (Plastic Cards), 91.713 (Indirect Lending), 91.714 (Leasing), 91.715 (Exceptions to the General Lending Policies), 91.716 (Prohibited Fees), 91.717 (More Stringent Restrictions), §91.718 (Charging Off or Setting Up Reserves), 91.719 (Loans to Officials and Senior Management Employees) and 91.720 (Small-Dollar, Short-Term Credit), as published in the April 18, 2014 issue of the Texas Register (39 TexReg 3261). The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Credit Union Department (Department)'s general rule review.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to readopt.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 91.701, §91.703, 91.705, 91.706, §91.707, 91.708; 91.709, 91.710, 91.711, 91.712, 91.713, 91.714, 91.715, 91.716, 91.717, §91.718, 91.719 and 91.720 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, 2001.039.

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Subchapter G. Lending Powers

§91.701. Lending Powers.

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Before engaging in any lending activity, each credit union shall establish written lending policies that set prudent credit underwriting and documentation standards for each specific type of lending activity. The lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

- (1) Be consistent with safe and sound credit union practices;
- (2) Be appropriate to the size and financial condition of the credit union and the nature and scope of its operations;
- (3) Be compatible with the size and expertise of the credit union's lending staff;
- (4) Be compliant with all related laws and regulations;
- (5) Be reviewed and approved by the credit union's board of directors at inception and annually, thereafter;
- (6) Address loan portfolio diversification standards to avoid undue concentrations of risk;
- (7) Address loan documentation and underwriting standards that are clear and measurable;
- (8) Address loan administration procedures for monitoring the loss exposure from the loan portfolio;
- (9) Address loan pricing guidelines to ensure that the rate of return is consistent with the risk from the lending activity; and
- (10) State the lending authority delegated to any individuals or committees by the board of directors.

(c) Loan Documentation. The lending policies shall include loan documentation practices that:

- (1) Enable the credit union to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; and
- (3) Ensure that any claim against a member is legally enforceable.

(d) Credit Underwriting. A credit union shall establish and maintain prudent credit underwriting practices that:

- (1) Are commensurate with the types of loans the credit union will make and consider the terms and conditions under which they will be made;
- (2) Consider the nature of the markets in which loans will be made;
- (3) Provide for consideration of the member's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the member's character and willingness to repay as agreed;
- (4) Take adequate account of concentration of credit risk; and
- (5) Are appropriate to the size of the credit union and the nature and scope of its activities.

(e) Loan Maturity Limit. Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of any loan or extension of credit to a member may not exceed 15 years. Minimum payments, on a line of credit balance must be sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization.

(f) Liquidity. In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(g) Waivers. The commissioner in the exercise of discretion may grant a waiver in writing of any lending requirement described in this chapter. A decision to deny a waiver, however, is not subject to appeal. A waiver request must contain the following:

- (1) The requirement to be waived, the higher limit or the ratio sought;
- (2) An explanation of the need for the waiver or to raise the limit or ratio; and
- (3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

§91.703. Interest Rates.

(a) Loans made by each credit union shall bear interest at a rate or rates as may be determined by the credit union's board of directors. A board may delegate all or part of its power to determine the interest rates on any lending transactions. The board may also authorize a refund of interest on loans under the conditions it may prescribe.

(b) A loan may provide for variable interest rates, so long as the factor or index governing the extent of the variation is not under the control of the credit union and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is not available to the public.

§91.705. Home Improvement Loans.

In addition to the requirements of this chapter, all loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

§91.706. Home Equity Loans.

For any loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in this chapter and in Section 50, Article XVI, Texas Constitution will apply. If there is an irreconcilable conflict between a constitutional provision and the provision of this section, the constitutional requirement shall prevail.

§91.707. Reverse Mortgages.

A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution and other applicable law. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

§91.708. Real Estate Appraisals or Evaluations.

(a) Policies and Procedures. A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) Loans Over \$250,000. For real estate loans in which the amount of the loan or extension of credit exceeds \$250,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) Loans \$250,000 or Less. For a real estate loans with an amount of the loan or extension of credit of \$250,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral that is supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations or from tax appraisal data of a governmental entity.

(d) Right to Require an Appraisal. The commissioner may require an appraisal under this section, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the collateral is overstated.

(e) Existing Loans. In the case of renewal of a loan where there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of additional funds, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

(f) Other Appraisal Requirements. A credit union shall also comply with applicable real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

§91.709. Member Business Loans.

(a) A member business loan is defined as any loan, line of credit, or letter of credit (including any unfunded commitments), the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following shall not be considered a member business loan for the purposes of this rule:

(1) A loan fully secured by a lien on a 1- to 4-family dwelling that is the member's primary residence;

(2) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(3) Loan(s) to a member or associated member which, when the net member business loan balances are added together, are equal to less than \$50,000; or

(4) A loan where a federal or state agency or one of its political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.

(b) This section does not apply to loans made by a credit union to other credit unions and credit union service organizations.

(c) Any interest a credit union obtains in a loan that was made by another lender to the credit union's member is a member business loan, for purposes of this section, to the same extent as if made directly by the credit union to its member.

(d) Any interest a credit union obtains in a nonmember loan, pursuant to §91.805 (relating to loan participation investments) shall be treated the same as a member business loan for purposes of this section, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in subsection (f) of this rule.

(e) A credit union with a net worth ratio greater than 6% may make member business loans subject to the conditions of this section. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

(f) If a credit union holds any nonmember loan participation investments that would constitute a member business loan if made to a member, those loans will affect the credit union's aggregate limit on net member business loan balances as follows:

(1) The total of the credit union's net member business loan balances and the nonmember participation investments must not exceed the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets, unless the credit union has first received approval from the commissioner.

(2) To request approval from the commissioner, a credit union must submit a letter application that:

(A) Includes a current copy of the credit union's member business loan policies;

(B) Confirms that the credit union is in compliance with all other aspects of this rule;

(C) States the credit union's proposed limit on the total amount of nonmember loan participation investments that the credit union may acquire if the application is granted; and

(D) Attests that the acquisition of nonmember loan participation investments is not being used, in conjunction with one or more other credit unions, to have the effect of trading member business loans that would otherwise exceed the aggregate limit.

(3) If the commissioner approves the request, the commissioner will promptly forward the request to Region IV of the NCUA for decision under NCUA rules at 12 C.F.R. 723.16. The commissioner's approval is not effective until the regional director of the NCUA approves it in accordance with NCUA Rule at 12 C.F.R. 723.16.

(4) The commissioner shall deny a request to exceed the aggregate limit on a credit union's net member business loan balances, or may revoke a previously approved increased aggregate limit, if the commissioner determines that:

(A) the treatment of loan purchases or participations interest will or has resulted in circumvention of the aggregate limit;

(B) the credit union's level of capital is not commensurate with that needed to support the additional risks that will be or has been incurred; or

(C) the performance of the activity by the credit union will or has adversely affected the safety and soundness of the credit union, or poses a material risk to the share insurance fund.

(g) The aggregate amount of net member business loan balances to any one member or group of associated members shall not be more than 15% of the credit union's net worth (less the Allowance for Loan Losses account) or \$100,000.00, whichever is higher.

(h) All member business loans must be secured by collateral in accordance with this section, except the following:

(1) a credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(2) a loan made by a credit union under the following conditions:

(A) the aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of one hundred thousand dollars or 2.5% of the credit union's net worth;

(B) the aggregate of all unsecured outstanding member business loans does not exceed ten percent of the credit union's net worth; and

(C) the credit union has a net worth of at least seven percent.

(i) The maximum loan-to-value (LTV) ratio for a member business loan may not exceed eighty percent, except when:

(1) the loan is secured by collateral on which the credit union will have a first mortgage lien, and the loan is covered by private mortgage or equivalent type insurance, or insured, guaranteed, or subject to advance commitment to purchase, by any federal or state agency or any political subdivision of this State, but in no case may the LTV ratio exceed ninety-five percent; or

(2) the loan is to purchase a car, van, pickup truck, or sport utility vehicle and is not part of a fleet of vehicles, but the LTV ratio and the term for this type of vehicle loan must be consistent with the depreciation schedule of any vehicle used for a particular type of business.

(j) A credit union that engages in this type of lending shall adopt specific member business loan policies and review them at least annually. In addition to the general lending provisions of this subchapter, the member business loan policies, at a minimum, shall address all of the following areas:

(1) Types of business loans to be made and collateral requirements for each type of loan.

(2) The maximum amount of net member business loan balances relative to the credit union's net worth.

(3) The maximum amount of any given category or type of member business loan relative to the credit union's net worth.

(4) The maximum amount that will be loaned to any one member or group of associated members, subject to subsection (g) of this section.

(5) The qualifications and experience requirements for personnel involved in making and servicing business loans, subject to subsection (k).

(6) A requirement for analysis of the member's initial and ongoing financial capacity to repay the debt.

(7) Documentation sufficient to support each request for an extension of credit or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not reasonably available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the standard documentation must include the following:

(A) A balance sheet;

(B) An income statement;

(C) A cash flow analysis;

(D) Income tax data;
(E) Analysis of operating performance ratios, and comparison with industry averages, when applicable; and

(F) Receipt and the periodic updating of financial statements, income tax data, and other documentation necessary to support the borrower's ongoing repayment ability.

(8) Collateral requirements which include all of the following:

(A) Loan-to-value (LTV) ratios;

(B) Appraisal, determination of ownership, and insurance requirements;

(C) Environment impact assessment, when applicable; and

(D) Steps to be taken to secure various types of collateral.

(9) Identification, by position, of the officials and senior management employees who are prohibited from receiving member business loans which, at a minimum, shall include the credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and any associated member or immediate family member of such persons.

(10) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

(k) The board of directors must use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. A credit union can meet the experience requirement through various approaches, including the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

(l) Any third party used by a credit union to meet the requirements of subsection (k) must be independent from the transaction and is prohibited from having a participation in the loan or an interest in the collateral securing the loan that the third party is responsible for reviewing, with the following exceptions:

(1) the third party may provide a service to the credit union related to the transaction, such as loan servicing;

(2) the third party may provide the requisite experience to the credit union and purchase a participation interest in a loan originated by the credit union that the third party reviewed; or

(3) a credit union may use the services of a CUSO that otherwise meets the requirements of subsection (k) even though the CUSO is not independent from the transaction, provided the credit union has a controlling financial interest in the CUSO as determined under generally accepted accounting principles.

(m) Loans granted for the construction or development of commercial or residential property are subject to the following additional requirements:

(1) The aggregate of the net member business loan balances for all construction and development loans must not exceed 15% of the credit union's net worth. To determine the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property;

(2) The member borrower on such loans must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time the loan is made, except that this requirement will not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has

contracted to purchase the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase the property. Instead the collateral requirements of subsection (i) will apply; and

(3) The funds may be released only after on-site, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

(n) The commissioner, consistent with safety and soundness principles, may grant a waiver of a requirement imposed by this Section only in the following areas:

(1) Aggregate construction or development loan limits under subsection (m);

(2) Minimum borrower equity requirements for construction or development loans under subsection (m);

(3) LTV ratio requirements for member business loans under subsection (i);

(4) Maximum aggregate net member business loan balances to any one member or group of associated members under subsection (g); and

(5) Maximum unsecured member business loan limits under subsection (h).

(o) A waiver request authorized under subsection (n) must contain the following:

(1) A copy of the credit union's member business lending policy;

(2) The higher limit or ratio sought;

(3) An explanation of the need to raise the limit or ratio;

(4) Documentation supporting the credit union's ability to manage this activity; and

(5) An analysis of the credit union's prior experience making member business loans, including as a minimum:

(A) the history of loan losses and loan delinquency;

(B) volume and cyclical or seasonal patterns;

(C) diversification;

(D) concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of net worth;

(E) underwriting standards and practices;

(F) types of loans grouped by purpose and collateral; and

(G) the qualifications of personnel responsible for underwriting and administering member business loans.

(p) In determining action on a waiver request made under subsection (n), the commissioner will consider the credit union's:

(1) Condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(2) Adequacy of policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if an approval decision is made.

(3) Record of performance. If the member business loan record is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(4) Elevated level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

(q) The commissioner will provide the NCUA regional director with a copy of each waiver request made under subsection (n). The regional director will be consulted on all waiver requests. The regional director will provide NCUA's views within 30 calendar days, or NCUA will be deemed to have concurred with the commissioner's decision. The thirty days will begin to run once the commissioner and the regional director agree that the waiver request is complete.

(r) A credit union may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(s) A credit union may not grant a member business loan to a compensated director unless the board of directors approves granting the loan and the compensated director is recused from the decision making process.

(t) If a credit union makes a member business loan as part of a Small Business Administration guaranteed loan program with loan requirements that are less restrictive than those required by Commission Rules, then the credit union may follow the loan requirements of the relevant Small Business Administration guaranteed loan program.

(u) For the purposes of this section, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Associated member – means any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

(2) Construction or development loan – a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use.

(3) Loan-to-value ratio – the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(4) Net Member Business Loan Balance – means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares or deposits in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

(5) Net Worth – means retained earnings as defined under Section 702.2 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 702).

§91.710. Overdraft Protection.

(a) Written Policy. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program. The policy must:

1. Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses;

2. Establish a time limit no later than 60 calendar days from the date first overdrawn to charge off the overdraft balance if the member does not repay the overdraft balance, or does not obtain an approved loan from the credit union;

3. Limit the dollar amount of overdrafts the credit union will honor per account;

4. Institute prudent practices related to suspension of overdraft protection services; and

5. Establish the fee, if any, the credit union will charge members for honoring overdrafts.

(b) Safety and Soundness Requirements. A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles.

Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.

(c) Communications with Member. A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.

(d) Other Requirements. A credit union shall also comply with the overdraft service requirements contained within Part 205 of the Federal Reserve System Rules and Regulations (Regulation E).

§91.711. Purchase and Sale of Member Loans.

(a) Policies. A credit union may sell or purchase all or part of a participation interest in a member loan or pool of member loans in accordance with written policies adopted by the board of directors that address the following matters:

(1) The type of entities to which the credit union is authorized to sell participation interests in member loans;

(2) The types of member loans in which the credit union may purchase or sell a participation interest and the types of participation interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of participation interests in member loans;

(4) Limitations on the aggregate principal amount of participation interest in member loans that the credit union may purchase from a single entity as necessary to diversify risk, and limitations on the aggregate amount the credit union may purchase from all entities;

(5) Provision for the identification and reporting of member loans in which participation interests are sold or purchased; and

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment.

(b) Purchase and Sale Agreements. The sale or purchase of a member loan or participation interest must be based on a written agreement between the parties. Agreements to purchase or sell a member loan or a participation interest shall, at a minimum:

(1) Identify the particular member loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the participation interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the member loan and the protection of the participation interests of the credit union.

(c) Member Loan Servicing. A credit union may sell to or purchase from any participant the servicing of any member loan in which it owns a participation interest. If a party other than the credit union will be servicing the member loan(s), the credit union shall ensure that all contracts require the servicer to administer the member loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

(d) Definition. For purposes of this section, a member loan means a loan or extension of credit where the borrower(s) is a member of the credit union or a member of another participating credit union.

(e) Independent Credit Judgment. A credit union that purchases a participation interest in a member loan has the responsibility of conducting member loan underwriting procedures on the member loan to determine that it complies with the policies of the credit union and meets the credit union's credit standards. The credit union shall make a judgment on the creditworthiness of the borrower that is independent of the originating lender and any intermediary seller prior to the purchase of the participation interest and prior to any servicing action that alters the terms of the original agreement. This credit judgment may not be delegated to any person that is not an employee or independent agent of the credit union. A credit union that purchases a participation interest in a member loan may use information, such as appraisals or collateral inspections, furnished by the originating lender, or any intermediary seller; however, the purchasing credit union shall independently evaluate such information when exercising its independent credit judgment. The independent credit judgment shall be documented by a credit analysis that considers the underwriting, documentation, and compliance standards that would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer.

(f) Other Requirements. A credit union purchasing a participation interest in a member loan from a lender that is not a credit union insured by the National Credit Union Share Insurance Fund, must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

(g) Sales with Recourse. When a member loan or participation interest is sold with recourse, it shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s).

§91.712. Plastic Cards.

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Card Activation – process of sending new plastic cards from the issuer to the legitimate cardholder in an “inactive” mode. Once the legitimate cardholder receives the card, they must call the issuer/processor and go through a member verification process before the card is “activated”.

(2) Card Security Code – a set of unique numbers encoded on the magnetic strip of plastic cards used to combat counterfeit fraud.

(3) Neural Network – a computer program that monitors usage patterns of an account and typical fraud patterns. The program analyzes activity to determine fraud risk scores to detect potentially fraudulent activity.

(4) Plastic Cards – includes credit cards, debit cards, automated teller machine (ATM) or specific network cards; and predetermined stored value and smart cards with micro-processor chips.

(b) Credit cards. A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:

(1) Credit policies to set individual limits for credit card accounts:

(2) A process for reviewing each member's payment and/or credit history periodically for the purpose of determining risk; and

(3) The credit underwriting standards for each type of card program offered.

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) The amount of losses caused by theft and fraud;

(B) The loss prevention measures (and their adequacy) currently employed by the credit union;

(C) The availability and possible implementation of other loss prevention measures such as card activation, card security codes, neural networks, and other evolving technology; and

(D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

§91.713. Indirect Lending.

(a) Indirect Lending Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property. As used in this chapter, an indirect financing is the credit union's purchase of a member's retail installment contract that is originated by a seller to finance the purchase of the motor vehicle or other property.

(b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the credit union's responsibility.

(c) Authorization. Credit unions may purchase or hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.

(d) Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.

(e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement. This oversight and control should include a periodic review of each material seller's retail installment contract statistics to ensure compliance with credit union credit criteria and to avoid undue concentrations of risk.

(f) Subprime Indirect Lending. If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that type of activity. At a minimum, due diligence shall focus on understanding the higher levels of

credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, "subprime indirect lending" refers to programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

§91.714. Leasing.

(a) Definitions. For the purposes of this section:

(1) The term net lease means a lease under which the credit union will not, directly or indirectly, provide or be obligated to provide for:

(A) the servicing, repair or maintenance of leased property during the lease term;

(B) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of subsection (c)(2)(A) of this section;

(C) the loan of replacement or substitute property while the leased property is being serviced;

(D) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) the renewal of any license, registration, or filing for the property unless such action by the credit union is necessary to protect its interest as an owner or financier of the property.

(2) The term full-payout lease means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the credit union to yield the return of its full investment in the lease property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term realization of investment means that a credit union that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals; and

(B) The estimated residual value of the property at the expiration of the term of the lease.

(b) Permissible Activities. Subject to the limitations of this section, a credit union may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

(c) Finance Leasing.

(1) A credit union may conduct leasing activities that are functional equivalent of loans made under those leases. Such financing leases are subject to the same restrictions that would be applicable to a loan.

- (2) To qualify as the functional equivalent of a loan:
- (A) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;
 - (B) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and
 - (C) At the termination of the financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or the value carried on the credit union's books.
- (d) General Leasing. A credit union may invest in tangible personal property, including vehicles, manufactured homes, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.
- (e) Leasing Salvage Powers. If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:
- (1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;
 - (2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or
 - (3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection.
- (f) Written Policies. A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written policies and procedures that address the additional risks associated with leasing.
- (g) Insurance Requirements. A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.
- (h) Holding Period. At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

§91.715. Exceptions to the General Lending Policies.

(a) Credit unions may provide for the consideration of loan requests from creditworthy members whose credit needs do not fit within the credit union's general lending policies. A credit union may provide for prudently underwritten exceptions to its lending policies. However, the Board is responsible for establishing written standards for the review and approval of exception loans.

(b) Each credit union establishing exceptions to its general lending policies shall establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan shall also be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans will be maintained as a part of the permanent loan file. Each credit union shall monitor compliance with its lending policies and individually report exception loans of a significant size to its board of directors.

(c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

§91.716. Prohibited Fees.

A credit union shall not make any loan or extend any credit if, either directly or indirectly, any commission, fee, or other compensation from any person or entity other than the credit union is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or extension of credit.

§91.717. More Stringent Restrictions.

The Commissioner may impose more stringent restrictions on a credit union's loans if the Commissioner determines that such restrictions are necessary to protect the safety and soundness of the credit union.

§91.718. Charging Off or Setting Up Reserves.

(a) The commissioner, after a determination of value in accordance with generally accepted accounting principles, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established.

(b) A credit union's financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written policies, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and lease

losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports.

§91.719. Loans to Officials and Senior Management Employees.

(a) Prohibition on Preferential Rates, Terms, and Conditions. The rates, terms, conditions, and availability of any loan or other extension of credit made to, or endorsed or guaranteed by, a director, senior management employee, member of the credit committee, or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Approval of Governing Board. Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, senior management employee, member of the credit committee, or an immediate family member of such individual, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans and extensions of credit to any one person, the person's business interests, and the members of the person's immediate family is greater than 15% of the credit union's net worth. A loan fully secured by shares in the credit union or deposits in other financial institutions shall not be subject to, or included in, the aggregate amounts included in this section.

(c) Definition. For purposes of this section, senior management employees shall include the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above), and the chief financial officer; and immediate family members shall include a person's spouse or any other person living in the same household.

(d) Aggregate Limit on Insider Loans. The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by, all directors, credit committee members, senior management employees, and immediate family members of all such individuals, shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) Reports to Governing Board. At least annually, the president shall make a report to the board of directors on the outstanding indebtedness of all directors, credit committee members, senior management employees, and immediate family members of such individuals. The Board's review shall be included as part of the minutes of the meeting at which the report was presented. The report required by this section shall include the following information:

(1) The amount of each indebtedness; and

(2) A description of the terms and conditions (including the interest rate, the original amount and date, maturity date, payment terms, security, if any, and any other unusual term or condition) of each extension of credit.

(f) Governing Board Option. At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all outstanding loans and extensions of credit to that person, the person's business interests, and the members of the person's immediate family do not exceed the greater of \$25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

§91.720. Small-Dollar, Short-Term Credit.

(a) General. Credit unions are encouraged to offer small-dollar credit products that are affordable, yet safe and sound, and consistent with applicable laws. The goal in offering these small-dollar credit products should be to help members avoid, or transition away from, reliance on high-cost debt. To accomplish this goal, credit unions should offer products with reasonable

interest rates, low fees, and payments that reduce the principal balance of the loan or extension of credit.

(b) **Definition.** For purposes of this section, small-dollar, short term credit product is defined as a low denomination loan or extension of credit having a term of 6 months or less, where the amount financed does not exceed \$1,100. Each credit union is responsible for establishing appropriate dollar limits and terms based upon its size and sophistication of operations, and its net worth.

(c) **Limitation.** Accessibility and expediency are important factors for many members with emergency or other short-term needs. Therefore, small-dollar credit products must balance the need for quick availability of funds with the fundamentals of responsible lending. Sound underwriting criteria should focus on a member's history with the credit union and ability to repay a loan within an acceptable timeframe. Given the small dollar amounts of each individual credit request, documenting the member's ability to repay can be streamlined and may need to include only basic information, such as proof of recurring income. The aggregate total of streamlined underwritten small-dollar credit products outstanding, however, shall not exceed 20% of the credit union's net worth.

(d) **Fees.** A credit union may require a member to pay reasonable expenses and fees incurred in connection with making or closing a loan. With respect to expenses and fees being assessed on small-dollar, short-term credit products, the expenses and fees are presumed to be reasonable if the aggregate total is \$20 or less. In addition, if the credit union refinances a small-dollar, short-term credit product, it may charge such expenses and fees only once in a 180-day period. Credit unions may also charge a late fee as permitted by Finance Code §4124.153.

(e) **Payments.** Credit unions should structure payment programs in a manner that reduces the principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments. Lines of credit should require minimum payments that pay off principal. Excessive renewals or the prolonged failure to reduce the outstanding balance are signs that the product is not meeting the member's credit needs and will be considered an unsound practice.

(f) **Required Savings.** Credit unions may structure small-dollar credit programs to include a savings component. The funds in this account may also serve as a pledge against the loan or extension of credit.

REAL ESTATE LENDING

D. (4) Discussion, Consideration, and Possible Vote to Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.704 Concerning Real Estate Lending.

BACKGROUND: Section 2001.39, Government Code, requires that a state agency review and consider for readoption each rule not later than the fourth anniversary of the date on which the rule took effect and every four years after that date. As provided in the noted section, the reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting the rule continues to exist. At its June 2012 meeting, the Commission approved a plan which establishes a date for the required review for each of the affected rules. In accordance with that plan, staff has reviewed 7 TAC Section 91.704 and is recommending that changes be made.

The amendments clarify maturity limits for certain real estate loans.

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

<p>The Credit Union Commission (the Commission) proposes amendments to <*>91.704 concerning Real Estate Lending. The amendments clarify maturity limits for certain real estate loans.

<p>The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

<p>Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p>The amendments are proposed under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code <*>123.201 which authorizes lending activities for credit unions.

<p>The specific section affected by the proposed amendments is Texas Finance Code, <*>123.201.

<*>91.704. Real Estate Lending.

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Home loan means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Finance Code <*>347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

(4) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(6) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

(1) Title insurance;

(2) Escrow administration;

(3) Loan payoffs;

(4) Collection and foreclosure; and

(5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish its own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) Unimproved land held for investment/speculation--Loan to value limit 60%

(B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%

(C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%

(D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%

(E) Other residential real estate such as a second or vacation home--Loan to value limit 90%

(F) Home equity--Loan to value limit 80%

(G) All Other--Loan to value limit 80%

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the outstanding balances, plus any unfunded commitment or line of credit from all sources on an item of collateral, divided by the market value of the collateral used to secure the loan.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, credit unions engaged in real estate lending are expected to have loan policies that establish prudent standards for loan structure including tenor and amortization that are within the risk parameters approved by the board of directors and consistent with the board of directors shall establish written internal maximum maturities for real estate lending transactions. These maturities should not exceed the following regulatory limits:

(1) Improved residential real estate loans (principal residenceowner-occupied, first lien)--40 years

(2) Improved residential real estate loans (secondary residenceowner-occupied, first lien)--30 years

(3) Improved residential real estate loans (investment property, first lien)—20 years

(3) (4) Interim construction loans--18 months

(4) (5) Manufactured home (first lien)--20 years

(5) (6) Home equity loans--20 years (second lien)--30 years (first lien)

(6) (7) Home improvement loans--20 years

(7) (8) A loan secured in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government or any agency of the Federal Government, may be made for the maturity specified in the law, regulations or program under which the insurance, guarantee or commitment is providedAll other loans—15 years

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan." "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:

(1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans guaranteed, insured, or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(g) Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization, or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

HOME EQUITY LENDING

D. (5) Discussion, Consideration, and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Sections 153.1 (Definitions), 153.5 (Three Percent Fee Limitation: Section 50(a)(6a)(E), 153.15 (Location of Closing: Section 50(a)(6)(N), and 153.51 (Consumer Disclosure: Section 50g).

BACKGROUND:

The proposed amendments implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §153.1, §153.5, and §153.15.

The proposed amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court.

The proposed amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation.

The proposed amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation. The amendment to this section also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, and it provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate. In addition, the proposed amendments to paragraphs (4), (6), (8), (9), and (12) add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation.

The proposed amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It provides that a lender may rely on an established system to evidence the date and place at which a power of attorney was signed. The amendment also permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

The proposed amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. The proposed amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

The proposed amendment in §153.51, proposed new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

RECOMMENDED ACTION: The Committee's recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

Part VIII. Joint Interpretations

Chapter 153. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this **chapter [section]**, unless the context indicates otherwise:

- (1) Balloon – an installment that is more than an amount equal to twice the average of all installments scheduled before that installment.
- (2) Business Day – All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.
- (3) Closed or closing – the date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.
- (4) Consumer Disclosure – The written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.
- (5) Cross-default provision – a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.
- (6) Date the extension of credit is made – the date on which the closing of the equity loan occurs.
- (7) Equity loan – An extension of credit as defined and authorized under the provisions of Section 50(a)(6).
- (8) Equity loan agreement – the documents evidencing the agreement between the parties of an equity loan.
- (9) Fair Market Value – the fair market value of the homestead as determined on the date that the loan is closed.
- (10) Force-placed insurance – insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.
- (11) **Interest – As used in Section 50(a)(6)(E), “interest” means the amount determined by multiplying the loan principal by the interest rate over a period of time. [Interest—interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.]**
- (12) Lockout provision – a provision in a loan agreement that prohibits a borrower from paying the loan early.
- (13) Owner – A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.
- (14) Preclosing Disclosure – The written itemized disclosure required by Section 50(a)(6)(M)(ii).
- (15) Three percent limitation – the limitation on fees in Section 50(a)(6)(E).

§153.5. Three percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) **Optional Charges.** Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the three percent fee limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the three percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the three percent limitation.

(2) **Optional Insurance.** Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the three percent limitation. Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) **Charges that are Interest.** Charges an owner or an owner's spouse is required to pay that constitute interest under **§153.1(11) of this title (relating to Definitions) [the law, for example per diem interest and points,]** are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) **Charges that are not Interest.** Charges an owner or an owner's spouse is required to pay that are not interest **§153.1 (11) of this title** are fees subject to the three percent limitation.

(5) **Charges Absorbed by Lender.** Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation.

(6) **Charges to Originate.** Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest **under §153.1(11) of this title** are fees subject to the three percent limitation.

(7) **Charges Paid to Third Parties.** Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating a loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(8) **Charges to Evaluate.** Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest **under §153.1(11) of this title**, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse ~~at the inception of an equity loan~~ to maintain an equity ~~the~~ loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. ~~[Charges that are not interest under that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.]~~

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the three percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the three percent limitation. Examples of these charges include title insurance and mortgage insurance protection.

(12) Charges to Service. Charges paid by an owner or an owner's spouse ~~at the inception of an equity loan~~ for a party to service an equity ~~the~~ loan that are not interest under §153.11(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. ~~[Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.]~~

(13) Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Chapter 342 of the Texas Finance Code may charge only those fees permitted in TEX. FIN. CODE, §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Chapter 342 of the Texas Finance Code and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Chapter 342 of the Texas Finance Code.

(14) Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the three percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums, maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(15) Subsequent Events. The three percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the three percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(16) Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the three percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision

of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead.

(2) Any [A lender may accept a properly executed] power of attorney allowing an [the] attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [A lender may receive] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company [by mail or other delivery of the party's signature to an authorized physical location and not the homestead].

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a close-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending
§§153.1, 153.5, 153.15, & 153.51

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §153.1, concerning Definitions, 153.5, concerning Three percent fee limitation, 153.15, concerning Location of Closing, and 153.51, concerning Consumer Disclosure.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §§11.308 and 15.413.

The main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

In 1997, the Texas Constitution was amended to authorize home equity loans. After further amendments in 2003, the commissions were authorized to adopt interpretations of the constitution's home equity provisions, subject to the requirements of the Texas Administrative Procedure Act. The commissions adopted their interpretations in 2004. A group of homeowners sued the commissions, challenging several of the adopted interpretations. The case was ultimately appealed to the Texas Supreme Court and

resulted in the court's decision in *Finance Commission of Texas v. Norwood*.

In *Norwood*, the court invalidated certain provisions interpreting Section 50(a)(6)(E), which provides that a home equity loan may not "require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit." The court invalidated §153.1(11) of the commissions' interpretations, which defined "interest" for purposes of the three percent limitation as "interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts." The court held that interest means "the amount determined by multiplying the loan principal by the interest rate." 418 S.W.3d at 588. The court also invalidated paragraphs (3), (4), (6), (8), (9), and (12) of §153.5, which applied the commissions' original definition of "interest" to several specific types of charges for purposes of the three percent limitation. In the supplemental opinion, the court explained that interest includes per diem interest and legitimate discount points, and that these amounts are not included in the three percent limitation. 418 S.W.3d at 596.

The court also invalidated provisions interpreting Section 50(a)(6)(N), which provides that a home equity loan must be "closed only at the office of the lender, an attorney at law, or a title company." The court invalidated §153.15(2), which allowed

a lender to accept a properly executed power of attorney authorizing someone to close a loan on a homeowner's behalf. It also invalidated §153.15(3), which allowed a lender to accept the homeowner's consent by mail. In the supplemental opinion, the court explained that "a power of attorney must be part of the closing to show the attorney-in-fact's authority to act." 418 S.W.3d at 596.

After the court issued its supplemental opinion, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") prepared an initial draft of amendments implementing the court's decision. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies received written precomments from several stakeholders.

Upon review of the precomments, the agencies prepared a second precomment draft incorporating several of the suggestions from the initial round of precomments. The agencies sent this second precomment draft to stakeholders, together with written explanations of the changes that had been made from the initial draft. The agencies received additional written precomments on the second draft.

The agencies have incorporated certain suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

As stated earlier, the main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*. The

individual purposes of each amendment are provided below.

The proposed amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court. One precommenter suggested including the phrase "over a period of time" in the definition. This phrase is included in the proposed amendment in order to clarify the time component in the definition. In addition, in its supplemental opinion, the court used the phrase "over a period of time" in applying the general definition of "interest." 418 S.W.3d at 596.

The precise mathematical formulation of interest and the exact nature of the applicable time period will be described in the loan contract. For example, in a loan contract using the true-daily-earnings method, the interest is calculated by dividing an annual rate by 365 and multiplying that amount by the outstanding principal each day. Other loan contracts will use different methods. Because different contracts will describe different methods for calculating interest, it is unnecessary for the amendments to specify a precise method. The purpose of the amendment is to describe how an amount already calculated under the contract will be excluded from the three percent limitation. The definition as proposed appears to achieve this purpose.

The proposed amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation. In the supplemental opinion, the court considered all per diem interest to be interest, as did the parties. The court stated: "We agree with [the parties] that per diem interest is still interest, though prepaid; it is calculated by applying a rate to principal over a period of time." 418 S.W.3d

at 596. In other words, the fact that per diem interest is prepaid does not affect its basic character as interest.

The proposed amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation. The amendment also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, and it provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate.

The proposed amendments to paragraphs (4), (6), (8), (9), and (12) of §153.5 add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation.

In response to precomments, paragraphs (9) and (12), regarding charges to maintain and service the loan, are also amended to provide clarity and delete redundant text. These changes are intended to be nonsubstantive. Charges to maintain or service the loan that are not customarily included at inception because they arise due to subsequent events (e.g., nonsufficient funds fees, payoff statement fees, fees for an updated flood determination) would continue not to be subject to the three percent limitation under the amended text.

The proposed amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It also provides that a lender may rely on an established system to

evidence the date and place at which a power of attorney was signed. In response to precomments, the amendment permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

Several stakeholders expressed concern that the amendments would somehow restrict the use of powers of attorney to the circumstances specified in the amendments. The amendments acknowledge three situations in which powers of attorney can be used (closing documents, signing the required consent, and receiving the consumer disclosure), but this does not prohibit the use of a power of attorney in other circumstances. The purpose of the amendments is to address the portion of the court's decision relating to the location of closing. It would be outside the intended scope of the amendments to provide a comprehensive statement of the circumstances in which a lender can (or should) use powers of attorney, or a statement of the conditions that must be satisfied in every power of attorney relating to a home equity loan. Apart from the circumstances described in the proposed amendments, the use of powers of attorney is largely an underwriting decision for the lender.

One stakeholder suggested that the amendments specify that the power of attorney must be signed at a permanent physical address. This change does not seem necessary. The current text of §153.15(1) already specifies that the authorized physical location for closing must be a permanent physical address. This provision should be sufficient to prohibit lenders from circumventing the interpretations through the use of nonpermanent locations.

The proposed amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. In response to a precomment, the proposed amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

One stakeholder expressed concern about executing the consent form at one location and sending it to another. The amendments do not prohibit any party from sending documents from one place to another, as long as the documents are executed at an authorized location.

In §153.51, proposed new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the amendments will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. Any costs are imposed by the constitution and are not imposed by the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendments are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §§11.308 and 15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments are contained in Article XVI, Section 50 of the Texas Constitution.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following

meanings when used in this chapter [section], unless the context indicates otherwise:

(1) - (10) (No change.)

(11) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time. [Interest--interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.]

(12) - (15) (No change.)

§153.5. Three percent fee limitation: Section 50(a)(6)(E)

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) [the law, for example per diem interest and points,] are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are

legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse [at the inception of an equity loan] to maintain an equity [the] loan that are not interest under §153.1(11) of this title are fees subject

to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] for a party to service an equity [~~the~~] loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(13) - (16) (No change.)

§153.15. Location of Closing: Section 50(a)(6)(N)

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) (No change.)

(2) Any [~~A lender may accept a properly executed~~] power of attorney allowing an [~~the~~] attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [~~A lender may receive~~] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company [~~by mail or other delivery of the party's signature to an authorized physical location and not the homestead~~].

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) - (4) (No change.)

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on June 20, 2014.

Leslie Pettijohn
Consumer Credit Commissioner
Joint Financial Regulatory Agencies

CALL REPORTS AND OTHER INFORMATION REQUESTS

D. (6) Discussion of and Possible Vote to Recommend that the Credit Union Commission Approve for Publication and Comment the Proposed Amendments to 7 TAC Section 91.209 Concerning Call Reports and Other Information Requests.

BACKGROUND: In January NCUA announced its decision to impose penalties against federally insured credit unions that fail to meet filing deadlines for call reports. They indicated that penalties would be assessed per day according to ranges set out in the Federal Credit Union Act, but NCUA would ‘consider mitigating factors,’ such as a credit union’s filing history, the gravity of the violation, and other circumstances, such as a natural disaster that prevented timely filing. NCUA specifically emphasized that it would impose these penalties solely to deter late filing. Any funds collected would be remitted to the U.S. Treasury, not retained for NCUA use.

NCUA has magnanimously agreed to reduce its penalty by any amount that we might assess under 7 TAC Section 91.209 for the same late filing, however, given the potential size of NCUA’s proposed fines, any penalty we might assess could pale in comparison. Since any penalty assessed by NCUA will go directly to the U.S. Treasury, we are proposing the amendments as a means to keep the funds in Texas. Staff tends to believe that such penalties could be better used to help reduce the amount of operating fees we need to collect from credit unions instead of giving the money to Congress to spend.

RECOMMENDED ACTION: The Committee’s recommendation will be discussed at the meeting.

NOTE: Coming upon a recommendation from the Rules Committee, a Standing Committee of the Commission, no second is needed to consider and vote on the issue.

<p>The Credit Union Commission (the Commission) proposes amendments to <*>91.209 concerning Call Reports and Other Information Requests. The amendments increase the Commissioner's flexibility to assess penalties when a credit union fails to file a timely and accurate quarterly financial and statistical report. Such penalties are intended as a deterrent to late, incomplete, and inaccurate filing of required reports

<p>The amendments are proposed in response to the imposition of penalties by the National Credit Union Administration (NCUA) when a credit union fails to file a timely and accurate quarterly financial and statistical report. The penalties proposed by NCUA for late or incomplete filing will be reduced by the amount of the penalties imposed by a state regulator for the same conduct. Penalties paid by credit unions to NCUA are entered into the United States Treasury funds, while penalties paid to the Department are maintained by the agency to support the regulatory framework of Texas state chartered credit unions. The amendments to this rule would not change the amount of the penalty paid by any credit union, but would simply allow the Department to retain the amounts collected for the benefit of Texas state chartered credit unions.

<p>Stacey McLarty, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

<p>Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

<p>Written comments on the proposal must be submitted within 30 days after its publication in the <eti>Texas Register<et> to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

<p>The amendments are proposed under Texas Finance Code, <*>15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code <*>122.101, which directs credit unions to submit call report to the Commissioner and permits the Commissioner to charge a fee for late reports, and <*>122.254 which sets out criminal penalties for providing false information.

<p>The specific sections affected by the proposed amended rule are Texas Finance Code, <*>122.101 and <*>122.254.

<*>91.209. Call Reports and Other Information Requests.

(a) Each credit union shall file a quarterly financial and statistical report with the Department no later than 22 days after the end of each calendar quarter. Unless the commissioner orders otherwise, call reports (Form 5300) timely filed with the National Credit Union Administration will comply with the reporting requirements of this subsection. If a credit union fails to file the quarterly report on time, the commissioner may charge the credit union a penalty of \$100 for each day or fraction of a day the report is in arrears.

(b) Any credit union that makes, files, or submits a false or misleading financial and statistical report required by subsection (a) of this section, is subject to an enforcement action pursuant to the Finance Code, Chapter 122, Subchapter F.

(c) A credit union shall prepare and forward to the Department any supplemental report or other document that the Commissioner may, from time to time require, and must comply with all instructions relating to completing and submitting the supplemental report or document. For the purposes of this section, the Commissioner's request may be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing, and must specifically advise the credit union that the provisions of this section apply to the request. If a credit union fails to file a supplemental report or provide a requested document within the timeframe specified in the instruction, after notice of non-receipt, the commissioner may levy a penalty \$50 for each day or fraction of a day such report or document is in arrears.

(d) If a credit union fails to file any report or provide the requested information within the specified time, the commissioner, or any person designated by the commissioner, may examine the books, accounts, and records of the credit union, prepare the report or gather the information, and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

(e) Any penalty levied under this section shall be paid within 30 days of the levy. Penalties received after the due date will be subject to a monthly 10% fee unless waived by the commissioner for good cause shown.

(f) The Department may, in lieu of imposing the penalty authorized by subsection (a), order a credit union to pay an amount, fixed by the Commissioner, that is minimally sufficient to negate the credit union being assessed a civil money penalty under Section 202 of the Federal Credit Union Act (12 U.S.C. § 1782) for late or false/misleading filing of a quarterly call report (Form 5300). This penalty shall be abated in part if the National Credit Union Administration exercises its authority to impose a civil money penalty for the same late or false/misleading filing. The penalty, however, shall not be decreased below the amount authorized to be levied under subsection (a).

COMMITTEE REPORT

D. (b) COMMISSIONER EVALUATION COMMITTEE – The Chair of the Committee will discuss the procedures for the Commissioner’s 2014 performance review.

BACKGROUND: The Commissioner Evaluation Committee is a standing committee of the Commission. The purpose of the committee is to coordinate the annual evaluation of the commissioner’s performance and oversee the development and maintenance of a commissioner’s succession plan. The annual evaluation process is to be completed at the first Commission meeting of the fiscal year.

Committee Members

- ❑ Allyson “Missy” Morrow, Chair
- ❑ Rob Kyker
- ❑ Sherri B. Merket
- ❑ Gary Tuma
- ❑ Vik Vad
- ❑ Manual “Manny” Cavazos, Ex-officio

RECOMMENDED ACTION: The Chairman will highlight the procedures for the Commissioner’s FY 2014 performance review. It is not anticipated that the Commission will take any formal action.

COMMISSIONER'S PERFORMANCE REVIEW

The Commission's Policies Manual calls for an annual performance review of the Commissioner by an evaluation committee. The review is to be completed during the last Commission meeting of the calendar year. (The FY 2014 evaluation form was approved by the Commission during its October 18, 2013 meeting.)

Each Commission member will be required to complete an evaluation form. After the completed forms have been submitted, the Commissioner Evaluation Committee will review the appraisals, gather any other necessary information, and prepare a proposed evaluation. The proposed evaluation will be reviewed in Executive Session and may be edited or revised by the Commission prior to presenting it to the Commissioner. The final evaluation will be presented to the Commissioner and performance standards for the upcoming fiscal year will be established and agreed upon.

The performance evaluation of the Commissioner is intended to accomplish the following:

- Clarify the Commissioner's leadership and management role as viewed by the Commission.
- Maintain a harmonious working relationship between the Commission and the Commissioner.
- Assure the Commission that the Department is being effectively administered by the Commissioner.

PROPOSED PROCEDURES

1. Each Commission member will receive electronic copies of both the Evaluation Form and a memorandum from the Commissioner outlining the Department's FY 2014 accomplishments by **September 15, 2014**.
2. Each Commission member will be asked to provide the Chair of the Commissioner Evaluation Committee with a copy of their completed evaluation form by **October 1, 2014**.
3. The Commissioner Evaluation Committee will meet on **October 16, 2014** to gather any pertinent information and prepare a proposed evaluation. In addition, the Committee will develop any proposed changes to the evaluation form and the corresponding performance measures for FY 2015.
4. During the Executive Session of the Commission meeting on **October 17, 2014**, the Commission will have the opportunity to review, comment on and/or revise the proposed evaluation, and formulate thoughts on goals for FY 2015.

E

DEPARTMENT'S FY 2014 BUDGET

E. (a) Discussion and Consideration of the Department's FY 2014 Budget.

BACKGROUND: As a self-directed, semi-independent agency, the Commission is solely responsible for reviewing and approving the Department's budget and expenditures. The financial statement for May 2014 will be distributed at the meeting.

RECOMMENDED ACTION: No formal action recommended.

Credit Union Department
 Operating Statement & Budget Analysis
 For the Period Ended 04/30/14

	FY 2014 Budget	FY 2014 YTD Budgeted Revenues	FY 2014 YTD Actual Revenues	Over (Under) Budget	Percent of Budget
REVENUES:					
Operating Income					
Operating Fees	\$2,835,729	\$2,824,729	\$2,822,024	(\$2,705)	100%
Out-of-State Branch Fees	\$0	\$11,000	\$11,000	\$0	
Examination Fees			\$2,950	\$2,950	
Application Fees			\$200	\$200	
Penalties		\$0	\$9,392	\$9,392	
Other			\$0	\$0	
Operating Income Subtotal		\$2,835,729	\$2,845,566	\$9,837	
Interest Income					
Interest Trust			\$305	\$305	
Interest USAS			\$0	\$0	
Interest Income Subtotal		\$0	\$305	\$305	
Refunds					
(vendors)			\$170	\$170	
Refunds Subtotal		\$0	\$170	\$170	
TOTAL REVENUES	\$2,835,729	\$2,835,729	\$2,846,041	\$10,312	100%
Reserves			\$1,033,657		

Credit Union Department
Operating Statement & Budget Analysis
For the Period Ended 04/30/14

	FY 2014 Budget	FY 2014 YTD Budget	FY 2014 YTD Actual	(Over)Under Budget	Percent of Budget
EXPENDITURES:					
Personnel Expenses:					
Salaries and Wages	\$1,835,620	\$1,223,747	\$1,183,629	\$40,118	97%
Overnight Stipends	\$0	\$0	\$0	\$0	n/a
Employee Benefits	\$501,227	\$334,151	\$355,789	(\$21,638)	106%
Other (longevity, lump sum)	\$37,140	\$24,760	\$25,864	(\$1,104)	104%
Total Personnel Expenses	\$2,373,987	\$1,582,658	\$1,565,282	\$17,376	99%
Travel Expenses:					
In State	\$328,020	\$218,680	\$186,944	\$31,736	85%
Out-of-State	\$5,000	\$3,333	\$856	\$2,478	26%
Commission	\$11,000	\$7,333	\$3,584	\$3,749	49%
Total Travel Expenses	\$344,020	\$229,347	\$191,384	\$37,963	83%
Other Operating Expenses:					
Communication/Utilities	\$27,380	\$18,253	\$15,486	\$2,767	85%
Professional Services/Fees	\$5,800	\$3,867	\$8,150	(\$4,283)	211%
Supplies/Materials	\$15,910	\$10,607	\$8,931	\$1,675	84%
Training/Registration	\$13,680	\$9,120	\$770	\$8,350	8%
Repairs/Maintenance	\$43,670	\$29,113	\$22,288	\$6,826	77%
Rentals and Leases	\$4,761	\$3,174	\$2,254	\$920	71%
Computers	\$23,600	\$15,733	\$1,355	\$14,378	9%
Other Operating	\$26,988	\$17,992	\$22,492	(\$4,500)	125%
State of Texas Services	\$80,500	\$53,667	\$7,266	\$46,401	14%
Capital Expenditures	\$49,000	\$32,667	\$0	\$32,667	0%
Restricted (parking lot)	\$15,090	\$0	\$0	\$0	100%
Total Other Operating Expenses	\$306,379	\$194,193	\$88,992	\$105,201	46%
TOTAL EXPENDITURES	\$3,024,386	\$2,006,197	\$1,845,657	\$160,540	92%
EXCESS REVENUES	(\$188,657)	\$829,532	\$1,000,383	\$170,852	

FINANCIAL SERVICES MARKET AND CREDIT UNIONS
REGULATED BY THE DEPARTMENT

E. (b) Discussion and Consideration of Current Status of the Financial Services Market and the Effect on Credit Unions Regulated by the Department.

BACKGROUND: Texas credit unions have been faced with the challenges of a difficult operating environment in recent years due to the national recession and a slow economic recovery. Changes in consumer spending resulting in lower loan demand in combination with an extremely competitive financial services market have created new challenges for Texas credit unions. Boards and management must work harder to capture their members business. The costs associated with advancing technology and achieving and maintaining regulatory compliance are also creating challenges for Texas credit unions. These costs are rarely recoverable through fees, so efficient operations are becoming even more critical.

CURRENT STATUS: Texas credit unions are performing well, with positive net worth growth. Trends when seasonally adjusted are comparable to the 1st quarter 2013. Credit unions are increasing their levels of long-term assets in an effort to enhance yield. This trend absent strong modeling capabilities and controls can result in material asset liability issues in an increasing rate environment. The Department is actively monitoring this area. Loan demand is positive; however, competition from captive and indirect lenders remains a challenge.

RECOMMENDED ACTION: No formal action is anticipated.

Recap of the Status of Credit Unions Regulated by the Department As of March 31, 2014

I. Industry Status

Credit union assets under the Department's jurisdiction totaled **\$31.6 billion** at March 31, 2014, and increased by **3.6%** or **\$1.1 billion** from the December 31, 2013 total of **\$30.5 billion**.

There were **147** profitable credit unions in the first quarter of 2014, with the industry reporting quarterly net income of **\$55.5 million** to produce a Return on Average Assets of **0.72%**. There were **41** credit unions reporting a net loss in the first quarter totaling **\$4.1 million** as a result of significant provision for loan loss reserves, required accounting adjustments for certain CUSO operations and/or projected NCUSIF assessments.

As of March 31, 2014, the ratio of delinquent loans to total loans has declined to **0.60%**, which is down from the ratio of **0.80%** reported as of December 31, 2013. The average net charge-off ratio has increased from **0.59%** to **0.61%**.

II. Problem Institutions

26 credit unions were assigned a CAMEL Rating of 3 or higher. Each credit union in this category is monitored through regular on-site contacts and review of compliance with issued and outstanding documents of resolution and other supervisory agreements or orders.

III. Enforcement Issues

The Department has the following administrative sanctions outstanding:

Dividend Restrictions	0
LUAs	2
Determination Letters	4
Cease and Desist	0
Conservatorship	1
Total	7

IV. Chartering Activity

New Charter

Examination Composite Ratings	
Rating	Rating Definition
One (1)	Credit unions in this group are sound in every respect and generally have components rated 1 or 2. Any weaknesses are minor and can be handled in a routine manner by the board of directors and management. These credit unions are the most capable of withstanding the vagaries of business conditions and are resistant to outside influences such as economic instability in their trade area. These credit unions are in substantial compliance with laws and regulations. As a result, these credit unions exhibit the strongest performance and risk management practices relative to the institution's size, complexity, and risk profile, and give no cause for supervisory concern.
Two (2)	Credit unions in this group are fundamentally sound. For a financial institution to receive this rating, generally no component rating should be more severe than 3. Only moderate weaknesses are present and are well within the board of directors' and management's capabilities and willingness to correct. These credit unions are stable and are capable of withstanding business fluctuations. These credit unions are in substantial compliance with laws and regulations. Overall risk management practices are satisfactory relative to the institution's size, complexity, and risk profile. There are no material supervisory concerns and, as a result, the supervisory response is informal and limited.
Three (3)	Credit unions in this group exhibit some degree of supervisory concern in one or more of the component areas. These credit unions exhibit a combination of weaknesses that may range from moderate to severe; however, the magnitude of the deficiencies generally will not cause a component to be rated more severely than 4. Management may lack the ability or willingness to effectively address weaknesses within appropriate time frames. Credit unions in this group generally are less capable of withstanding business fluctuations and are more vulnerable to outside influences than those institutions rated a composite 1 or 2. Additionally, these credit unions may be in significant noncompliance with laws and regulations. Risk management practices may be less than satisfactory relative to the institution's size, complexity, and risk profile. These credit unions require more than normal supervision, which may include formal or informal enforcement actions. Failure appears unlikely, however, given the overall strength and financial capacity of these institutions.

Four (4)	<p>Credit unions in this group generally exhibit unsafe and unsound practices or conditions. There are serious financial or managerial deficiencies that result in unsatisfactory performance. The problems range from severe to critically deficient. The weaknesses and problems are not being satisfactorily addressed or resolved by the board of directors and management. Credit unions in this group generally are not capable of withstanding business fluctuations. There may be significant noncompliance with laws and regulations. Risk management practices are generally unacceptable relative to the institution's size, complexity, and risk profile. Close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems. Institutions in this group pose a risk to the deposit insurance fund. Failure is a distinct possibility if the problems and weaknesses are not satisfactorily addressed and resolved.</p>
Five (5)	<p>Credit unions in this group exhibit extremely unsafe and unsound practices or conditions; exhibit a critically deficient performance; often contain inadequate risk management practices relative to the institution's size, complexity, and risk profile; and are of the greatest supervisory concern. The volume and severity of problems are beyond management's ability or willingness to control or correct. Immediate outside financial or other assistance is needed in order for the financial institution to be viable. Ongoing supervisory attention is necessary. Institutions in this group pose a significant risk to the deposit insurance fund and failure is highly probable.</p>

F

NEW BUSINESS

Three (3) new items are being presented to the Commission for its consideration and possible formal action. Specifically, the Commission will have:

- (a) Discussion, Consideration, and Possible Vote to Ratify and Approve the Expenditure of Funds to Citibank in the Amount of \$688.12 for Disputed Charges Incurred on one of the Department's Corporate Liability Individual Bill Accounts.
- (b) Discussion, Consideration, and Possible Vote to Approve the Department's Operating Plan and Budget for Fiscal Year 2015.
- (c) Discussion of the Chair's Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation).

RECOMMENDED ACTION: The Department requests that the Commission take action as indicated on the documents contained in **TAB F**.

DISPUTED CHARGES

F. (a) Discussion, Consideration, and Possible Vote to Ratify and Approve the Expenditure of Funds to Citibank in the Amount of \$688.12 for Disputed Charges Incurred on one of the Department's Corporate Liability Individual Bill Accounts.

BACKGROUND: The Homewood Suites Hotel in Waco, Texas alleged that property damage was caused on September 27, 2013, due to negligence by an employee of the Credit Union Department. The employee was staying at the hotel while conducting a multi-day examination of a credit union on behalf of the Department. Charges for the alleged damage were placed on the Department's Citibank Central Liability Individual Billed Travel Card (CLIBA) without authorization. The Department disputed the claims made by the hotel manager and disputed the charges to the Citibank account. The Department enlisted assistance from the Attorney General's Tort Claims Division and the Comptroller's office to resolve this matter. The hotel eventually reduced the charges to the Department account, maintaining that the Department was responsible for the remaining charges. Although the Department disagreed with the remaining charges, it was determined that paying the claim amount would be less costly than disputing it. On May 6, 2014, a check in the amount of \$688.12 (\$673.92 + \$14.20 prompt payment interest) was mailed to Citibank to resolve the outstanding charges.

RECOMMENDED ACTION: The Department recommends that the Commission ratify the May 6, 2014, payment to Citibank in the amount of \$688.12.

RECOMMENDED MOTION: I move that the Commission ratify the May 6, 2014, payment to Citibank in the amount of \$688.12.

OPERATING PLAN AND BUDGET FOR FISCAL YEAR 2015

F. (b) Discussion, Consideration, and Possible Vote to Approve the Department's Operating Plan and Budget for Fiscal Year 2015.

BACKGROUND: As detailed in the following pages, the Department seeks a fiscal year 2015 budget of \$3,490,764, an increase of \$466,378 over the FY 2014 budget. In the proposed budget, the full-time-equivalent (FTE) staffing level increases by two positions over the current year's authorized number. The proposal also includes merit pay increases for existing staff members.

In addition, the Department is requesting a base increase that would keep pace with inflation for certain expense categories, along with an increased investment in human capital and payroll-related costs. As in prior years, personnel-related expenses constitute the largest expense category. As the Department foresees vacancies in critical positions, it needs its experienced employees to have more time to work with newer employees to transfer critical knowledge and skills. The Department must also continue to emphasize training for its examiners and the need to capture the knowledge of employees who are eligible to retire. The proposal also includes resources to hire contractors when the Department needs technical specialists.

Further, the proposed budget includes continued funding for the multi-year electronic document management project as well as the necessary funds to complete the FY 2015 projects described in the Replacement/Capital Improvement Plan FY 2015-2017.

RECOMMENDED ACTION: The Department recommends that the Commission approve the requested FY 2015 Budget of \$3,490,764 and 27 FTEs.

RECOMMENDED MOTION: I move that the Commission approve the proposed FY 2015 Operating Plan and Budget, with a total budget of \$3,490,764 and 27 FTEs.

Summary of Proposed FY 2015 Budget

Cost-to-Continue Existing Services \$3,093,925

Strategic Initiatives (Consistent with Strategic Plan and Budget Assumptions)

Priority #1 – Increase Examination Workforce	\$ 149,402
Priority#2 – Salary Plan for Examiners	\$ 132,199
Priority #3 – Merit Increase Pool – Office Staff	\$ 27,013
Priority #4 – Equity Adjustment for Deputy Commissioner Position	\$ 25,344
Priority #5 – Specialized Contract Examiner Program	\$ 54,250
Priority #6 – College Student Program	<u>\$ 8,631</u>

Total Strategic Initiatives \$ 396,839

Grand Total Agency Requested Budget \$3,490,764

Full-Time-Equivalent Positions 27

FY 2015 Cost-to-Continue Existing Services Budget

Object of Expenses	FY 2014 Budget	FY 2015 Continuation Budget	Dollar Change
Salaries and Wages	1,835,620	1,835,620	0
Payroll Related Costs	501,227	556,227	55,000 ¹
Other Personnel Costs	37,140	37,720	580 ²
Travel	344,020	363,400	19,380 ³
Communication/Utilities	27,380	38,050	10,670 ⁴
Professional Services/Fees	54,800	45,800	<9,000> ⁵
Supplies /Materials	15,910	15,910	0
Training/Registration	13,680	13,680	0
Repairs/Maintenance	43,670	51,670	8,000 ⁶
Rentals and Leases	4,761	4,761	0
Computers	23,600	23,600	0
Other Operating	42,078	26,987	<15,091> ⁷
State of Texas Services	80,500	80,500	0
Grand Total	\$3,024,386	\$3,093,925	\$69,539

¹ These costs will exceed the budgeted amount in FY 2014 as a result of changes made by the Legislature during the 83rd Regular Session. Based on Salaries and Wages of \$1,835,620 and corresponding costs passed on to the Department for its retirees, additional funding is needed to cover these required costs.

² Increase necessary to cover statutorily required Longevity Pay for existing staff.

³ Travel cost will continue to escalate in FY 2015 requiring additional funding to maintain examination and training schedules.

⁴ Communication and utility costs for FY 2014 will exceed previous year's estimate. In addition, a 2 percent inflation factor has been included in accordance with the Budget Assumption.

⁵ One-time funding to cover the increased cost as a result of the bids coming in higher than the estimates on the parking lot project.

⁶ Estimated cost to complete projects delineated in the FY 2015-2017 Replacement/Capital Improvement Plan.

⁷ One-time funding for potential cost overruns on parking lot project.

FY 2015 Total Requested Budget

Object of Expenses	FY 2015 Continuation Budget	Strategic Initiatives	FY 2015 Budget Request
Salaries and Wages	1,835,620	243,826	2,079,446
Payroll Related Costs	556,227	70,465	626,692
Other Personnel Costs	37,720		37,720
Travel	363,400	31,066	394,466
Communication/Utilities	38,050		38,050
Professional Services/Fees	45,800		45,800
Supplies /Materials	15,910		15,910
Training/Registration	13,680		13,680
Repairs/Maintenance	51,670		51,670
Rentals and Leases	4,761		4,761
Computers	23,600		23,600
Other Operating	26,987	51,482	78,469
State of Texas Services	80,500		80,500
Grand Total	\$3,093,925	\$396,839	\$3,490,764

REVENUE HISTORY AND PROJECTIONS

Fiscal Year 2011

Total Fees Prescribed by Rule 97.113(b)	\$3,040,829
Discount Permitted by Rule 97.113(d)	<\$ 421,657>
Actual Assessment Collected	\$2,619,172

Fiscal Year 2012

Total Fees Prescribed by Rule 97.113(b)	\$3,167,613
Discount Permitted by Rule 97.113(d)	<\$ 408,903>
Actual Assessment Collected	\$2,758,710

Fiscal Year 2013

Total Fees Prescribed by Rule 97.113(b)	\$3,440,640
Discount Permitted by Rule 97.113(d)	<\$ 707,372 >
Actual Assessment Collected	\$2,733,268

Fiscal Year 2014

Total Fees Prescribed by Rule 97.113(b)	\$3,577,469
Discount Permitted by Rule 97.113(d)	<\$ 771,355 >
Actual Assessment Collected	\$2,806,114

Projected Fiscal Year 2015 (Using Assets as of March 31, 2014)*

Potential Fees – Rule 97.113(b)	\$3,745,038*
Proposed Budget FY 2015	<\$3,490,764 ⁸ >
Potential Discount – Rule 97.113(d)	\$ 254,274

*Actual fees will be based on assets as of June 30, 2013

Note: As required by Commission policy, staff has review all fees established by Rule 97.113 and recommends that the Commission make no changes to the fee structure at this time. The fees are currently at a level that ensures the recovery of the full cost of operating the Department.

⁸ Proposed Cost-to-Continue Current Services plus the Strategic Initiatives

Strategic Initiative Funding Request

FY 2015 Budget

Initiative Name: INCREASE EXAMINATION FORCE

Initiative Priority: 1

Objects of Expense:	FY 2015
Salary & Wages	\$93,952
Payroll Related Costs	\$27,152
Travel Expenses	\$24,816
Other Operating Expenses	\$ 3,482
Total	\$149,402

Description/Justification: Funding of this item is imperative for the Department to maintain an adequate level of supervision to meet regulatory responsibilities and achieve established performance measures. Credit unions continue to grow in size, and the complexity of the industry is constantly changing due to technological, legislative, and economic issues. This growth in complexity and sophistication requires knowledgeable examiners to properly evaluate their activities. The Department has been doing the best it can under the current constraints; however, examination resources are currently insufficient to do all of the required work.

At a minimum, to ensure that supervision is credible and effective, the Department needs two additional examiner FTEs. Credit union have become a bigger and more important player in the economic development of this State, and without the additional examination resources the Department cannot keep pace and carry out its duties and responsibilities with the professionalism and expertise they deserve. Ultimately, this will impair the Department's ability to protect Texas citizens from fraud, unethical conduct and other deviations from appropriate standards in connection with financial transactions. Credit unions benefit from well-resourced and effective supervision and this would be the first increase in examination staff in more than 20 years.

External/Internal Factors: External factors are primarily driving the need to increase examination staff. Changes in the economy, interest rate movements, and investment products are constantly shifting and requiring a thorough understanding of these dynamics. Technology continues to evolve, and the safe guarding of member information deserves the utmost attention. Further, competitive salaries to retain/attract qualified personnel along with the availability of external training will control the readiness of our examination staff to meet these challenges.

Strong, effective and independent supervision is critical to ensure a sound credit union system. Successful supervision gives the management of credit unions a valuable secondary perspective and bolsters the work of credit unions' risk management staff and structures. Supervision also acts as an essential discipline on the industry as a whole by setting risk management standards and providing a source of challenge against any relaxation of controls or build up of risk in individual credit unions. In doing so, effective supervision can contribute to greater financial stability and reduce both the likelihood of individual credit unions failing and their potential impact if they do so. Getting supervision right is in everyone's interest, both the government and the credit union industry.

Internal factors include budget constraints and impediments to improve the quality/level of experienced personnel. Unforeseen turnover and/or lack of funds for adequate training could impair the Department's capability to meet these objectives. The Department continues to work closely with the NCUA to minimize regulatory burden and maximize efficient use of personnel.

Strategic Initiative Funding Request FY 2015 Budget

Initiative Name: SALARY PLAN FOR EXAMINERS

Initiative Priority: 2

	FY 2015	FY 2016
Objects of Expense:		
Salary & Wages	\$102,559	\$29,485*
Payroll Related Costs	\$ 29,640	\$ 8,521
Travel Expenses	\$ 0	\$ 0
Other Operating Expenses	\$ 0	\$ 0
Total	\$132,199	\$38,006
*Projected Performance Pool as outlined in Plan		

Description/Justification: “Ensuring Texas has a safe and sound credit union system,” is a compelling mandate. Assessing credit unions’ safety and soundness requires examination by skilled examiners, and the ability to retain qualified examiners is an essential component in meeting this objective. Credit unions have grown in complexity and sophistication, requiring more skilled examiners to effectively evaluate their activities. It is therefore essential that the Department keep examiner turnover at a minimum. Offering an attractive overall benefit package –one that includes a competitive salary—is a key factor affecting examiner retention.

External/Internal Factors: Paying what is perceived as below market salaries makes it more difficult to attract and retain a qualified, motivated examiner work force, which ultimately may affect examination effectiveness. As an improving economy reduces the unemployment rate, the importance of this issue may increase substantially. Additionally, the work demanded from the examination staff is likely to be more complex in the future. Therefore, it is essential going forward that the Department continues to be able to attract a skilled examiner work force. The Department must bring its examiner pay system more closely in line with the National Credit Union Administration to improve and sustain the long-term retention rate and value of the Department’s examination workforce, benefiting all of its stakeholders.

CREDIT UNION DEPARTMENT, STATE OF TEXAS

Salary Plan for Examiners

June 2014

Introduction

The Department competes with credit unions, other state agencies, and federal regulatory agencies for its examiners. The way examiners are compensated is an important component of the Department's overall recruitment and retention strategy for its examination staff. In FY 2014 there are 15 authorized examiner positions. The salaries being paid to the examination staff has become a less than effective tool at meeting the expectations and needs of this dynamic group. To better motivate, retain, and attract skilled examiners, in February 2014, the Commission directed staff to develop a new salary plan for examination staff.

In directing the creation of this salary plan, the Commission recognizes the importance of the examination staff and the need to assure the Department has a program designed to compensate examiners fairly, to maintain a competitive pay structure, and reward performance. To achieve these objectives, the Department needs to create a pay structure that is competitive externally, internally, and individually.

It is important that examiners be paid fairly compared to people doing equivalent work external to the Department. The Department should determine fairness by comparing its salaries for examiners with the salaries NCUA pays for equivalent jobs.

Internal, the Department staff must assign duties and responsibilities consistent with their position description and grade level. Each position's salary grade level is based on the job description for that position, so accurate job descriptions and workload assignments are essential.

Individually examiners should be rewarded for their performance relative to that of his/her peers consistent with their job descriptions. Based on that performance, an examiner should be awarded higher compensation within their current salary range or, if the examiner receives a competitive promotion to a higher salary range.

Examiner compensation is a major factor contributing to the Department's ability to sustain its regulatory and supervisory programs. Therefore, examiner compensation levels must be competitive and a high-priority element of budgetary planning each fiscal year.

“Examiner” Defined

The term “examiner,” when used in this Plan, refers only to an individual classified as Financial Examiner (Class codes 1100, 1102, 1104, 1106, 1108, 1110, and 1112) who spends at least 50 percent of their time actually conducting on-site examinations of credit unions.

Mission Critical Staff

There is probably no one factor more critical to the Department’s overall success or its ability to accomplish its mission than its examination staff. Acquiring, developing, and retaining a competent, highly motivated, and diverse examination workforce is one of the Department’s top priorities and is one of its four strategic goals. At the same time significant internal and external factors affect the Department’s current and future examination workforce, challenging the Department’s ability to ensure that the right people are in the right positions at the right time.

Background

The Department has worked diligently to earn the trust of the citizens of Texas, the credit union industry it supervises, and other governmental agencies with whom it cooperates. It has sought this trust through many avenues, but mainly around one objective – providing the highest quality supervision possible at the most efficient cost. To meet these challenges, the Department’s staff, and in particular its examiners, must be composed of qualified individuals to carry out and administer the agency’s supervisory responsibilities.

Over the years, the Department has worked diligently to reduce and abate turnover in examiner positions and now more than ever the ability to retain skilled and knowledgeable examiners is an essential goal. The Commission has responded positively to the Department’s needs by providing a competitive salary structure, which reduced turnover. While these previous measures were significant steps, further action is needed to ensure competent examiners remain with the agency, and a sizeable compensation imbalance does not re-emerge.

Compensation for examiners currently consists of base salary and a package of benefits offered by the State of Texas. Benefits have a monetary value and both the Department and examiners should consider this value in reviewing overall compensation. This plan, however, solely describes the administration of the Department’s examiner salary program.

The Department assigns each examiner job title to a specific pay grade that has an established minimum to maximum salary range. Examiners assigned a specific job title will be paid within the stated salary range.

The specific salary structure for the examiner series consists of seven pay grades, as shown in Table 1.

Table 1: Examiner Salary Structure

<u>Grade</u>	<u>Salary Range</u>		
	<u>Minimum</u>	<u>Mid-Point</u>	<u>Maximum</u>
B17	\$36,251	\$ 46,055	\$ 55,858
B19	\$41,416	\$ 53,688	\$ 65,959
B21	\$47,331	\$ 61,424	\$ 75,517
B23	\$54,102	\$ 70,280	\$ 86,459
B25	\$61,867	\$ 80,427	\$ 98,987
B27	\$74,859	\$ 99,188	\$123,517
B29	\$90,579	\$120,018	\$149,456

An individual examiner’s salary is based on an examiner’s application of his or her knowledge, skills, abilities and competencies, as well as work experience, education, training, and certification (commissioned examiner). An examiner’s salary is also based upon compensable factors such as job complexity, accountability, performance and results.

Examiner Turnover

The Department dedicates considerable resources (time and money) in an effort to hire and retain examiners who “best fit” the job and who enjoy putting in the effort to accomplish its mission and goals. Training during the developmental period (3-5 years) provides a journeyman examiner the skills needed to effectively and independently perform their assigned duties. The ability to retain journeyman examiners is essential to the Department’s ability to achieve its mission.

Turnover of examiners has serious implications for the Department beyond the impact lost knowledge and experience has on staff performance levels, regulatory oversight and other aspects of agency performance. Not the least of these is the direct financial cost of losing and replacing an examiner. While it is difficult to fully calculate the cost of examiner turnover (including hiring and training cost), the American Management Association and others report a range between 25 percent and 250 percent of annual salary per exiting employee.

Since these turnover costs are largely hidden and it is not something contained in a line item in the budget, Table 2 summarizes examiner turnover for the last ten fiscal years and the estimated costs using the conservative 25 percent calculation above.

Table 2: Examiner Turnover and Its Cost

Fiscal Year	Number of Terminations	Estimated Turnover Cost
2005	4	\$46,507
2006	4	\$41,181
2007	2	\$18,000
2008	3	\$34,191
2009	2	\$21,325
2010	3	\$33,657
2011	1	\$11,682
2012	2	\$25,137
2013	1	\$11,502
2014 (YTD)	2	\$31,161

The success of the Department depends on the ability of its examiners to detect problems early and to tailor supervisory strategies for resolution. Key to this ability is a skilled examination staff who can independently perform extensive analysis and demonstrate sound judgment.

Virtually all of the Department's examiner talent is homegrown. Typically, the Department hires new college graduates, and following a developmental period of three to five years, examiners are deemed independently competent to handle most any situation. Unfortunately, the Department finds itself in an almost constant process of hiring and replacing journeyman examiners who leave before they have reached a tenure where they are fully capable and productive. Specifically, an examiner that was hired during the last ten fiscal years and has subsequently either voluntarily or involuntarily departed was with the Department, on average, 24.1 months. While this average time of service has risen in recent years, this continuing cycle of examiner hiring and replacement is a drain on the agency's resources that could be better utilized to improve examination quality and examiner achievement.

More detailed information on the Department's cycle of hiring and replacing examiners is shown in Table 3.

Table 3: New Hire's Average Tenure When Exiting

Fiscal Year	# Examiners Hired	# Still on Staff	Avg. Tenure of those Exiting
2005	4	0	22 months
2006	5	1	16 months
2007	1	0	1 month
2008	2	0	25 months
2009	3	0	26 months
2010	4	2	35 months
2011	0	N/A	N/A
2012	3	2	16 months
2013	2	2	N/A

Minimizing examiner turnover will become more important for the Department as the economy continues to improve and the demand for many skills increase. Talented examiners who stayed put during the challenging economy will be more likely to accept better offers from other organizations.

Examiner Compensation

The Department recognizes the importance of its examination staff and the need to invest resources in them to develop and maintain the capacity to achieve its mission. Additionally, the Department strives to pay examiners in ways that reward contribution, recognized quality performance, and encourage growth and development.

The Department aspires to support this philosophy through a compensation program designed to:

- Support the mission of the Department;
- Attract and retain a well-qualified examination staff;
- Provided equitable and fair compensation for similar qualifications and work;
- Help the Department compete successfully for examiners with the mix of knowledge and skills vital to its mission;
- Ensure compliance with applicable laws and regulations;
- Recognize, motivate, and reward commendable performance; and
- Pay at levels that are competitive with NCUA and fiscally responsible.

Base Salary

Base salary for examiners is based upon an individual's skill, education, and experience. The Department's goal is to have base salaries which are competitive on average with the NCUA. This means that the average salary of all the incumbents in any job should be close to the average of salaries for an equivalent position with NCUA. Individual salaries may be above or below the average, depending on factors such as performance and experience. An examiner who is paid a base salary at the midpoint of the salary range possesses full job knowledge, qualification, and experience for the position.

Starting Base Salary

a. If an examiner is being hired and the Department has one or more examiners in the same job title, the new examiner's starting salary should generally not exceed the current salary of any examiner with the same job title who has comparable qualifications. The assessment of comparable qualifications includes: experience, competencies, documented job-related performance, and education. If a new examiner's salary would create an inequity, the Department should consider an appropriate salary adjustment for existing examiners. Equity increases must be approved by the Commissioner before the examiner can be hired.

b. The minimum of the pay range is typically paid to examiners who meet, but do not exceed, the minimum qualifications of the position. Starting salaries above the minimum and up to the midpoint may be considered depending on such factors as:

- The extent to which the examiner’s level of education and years of experience exceed the minimum requirements for the position.
- Job market-related pressure on salary levels.
- Internal equity considerations.
- Internal budget constraints.

Starting salaries above the midpoint may be considered for individuals who have directly related unique competencies or directly related experience or education that is extensively beyond the minimum requirements of the position, or in cases of unusually critical market-related pressure on salary levels. A written justification for all salaries above the midpoint should be submitted with the hire packet and approved by the Commissioner.

Competitive (Market) Pay

It is important to differentiate between having a salary structure (grades, salary ranges and midpoints) that provides competitive rate “opportunity” and actually paying examiners at those rates. Some would describe this as whether the Department is “walking the talk.”

For their part, examiners relate to what they are being paid, not the midpoint of a salary range or other such declared “opportunity.” To many of them the Department’s “competitiveness” is more illusion than fact, especially if they have been with the Department for more than 3 years. Thus it is important for the Department to keep its focus on actual versus opportunity pay.

As indicated in Table 4 below, circumstances outside the Department’s control have adversely affected the relative position of the examiners’ salaries that cannot be handled by typical annual merit increases. Specific salary information is difficult to obtain from NCUA, so we also included average salaries with those paid by the Department of Banking and the Department of Savings and Mortgage Lending to ensure we have realistic and practical numbers.

Table 4: Salary Comparison with Comparable Regulatory Agencies

Title	CUD Average Salary	Banking Dept. Average Salary	SML Dept. Average Salary	NCUA Average Salary
Examiner I	42,600	46,674	43,200	42,875
Examiner II	46,096	52,803	46,571	52,921
Examiner III	55,452	60,670	56,034	67,729
Examiner IV	54,474	70,405	63,855	78,305
Examiner V	89,602	82,383	65,436	90,461
Examiner VI	101,645	95,103	88,668	104,369
Examiner VII	112,946	114,044	107,520	120,603

Periodic Salary Increases

As indicated in Table 5, the Department's the average salary for an entry level examiner is competitive with the NCUA but lags the Department of Banking. In addition, the Department does not keep pace with the periodic salary increases/promotions provided by these two agencies. To remain competitive and reduce examiner turnover, funding must be allocated annually to examiner salary increases. Salary increases provided to examiners should be based upon performance rather than an across-the-board basis. An examiner that has a completed current satisfactory performance review should be deemed to have performed at a level sufficient to receive a pay increase by means of a salary increase or by a promotion. If an examiner receives an unsatisfactory evaluation, he/she should not be eligible for a salary increase.

Table 5: CUD Salaries as Percent of Others Salaries

Title	CUD Average Salary	CUD Adjusted as Percent of Banking Dept.	CUD Adjusted as percent of SML Dept.	CUD Adjusted as percent of NCUA
Examiner I	42,600	91.3	98.6	99.4
Examiner II	46,096	87.3	98.9	87.1
Examiner III	55,452	91.3	98.9	81.9
Examiner IV	54,474	77.4	85.3	69.6
Examiner V	89,602	108.8	136.9	99.1
Examiner VI	101,645	106.9	114.6	97.4
Examiner VII	112,946	99.0	105.0	93.7

Performance Appraisals

Written performance appraisals are prepared by supervisors and reviewed with examiners annually. The goals of the Department's Performance Appraisal System are to:

- Improve the examiner's understanding of their assignments, the established standards for performance, and their progress in meeting these standards.
- Encourage examiner development for better job performance.
- Assist in identifying examiner training needs.
- Ensure objectivity, consistency and fairness in appraising examiners.

The Performance Appraisal System consists of performance factors, each weighted according to its degree of importance to the job, and goals and objectives. It is adaptable to each job classifications, changes in assignments and responsibilities, and variations in importance of performance factors. Appraisals are accomplished through the application of appropriate performance factors relating to the assigned task and through the use of factor weighting applied to these performance factors. Examiners are rated from Unacceptable to Significantly Exceeds Standard, on a 1-5 rating scale.

Each examiner is given a final rating on an annual basis effective May 31 of each year. During the year the employee also receives a less formal Mid-period Review, effective November 30, indicating performance progress.

Progression within this Plan will be based on the acquisition and use of the required skills to the standard expected for the position. Performance reviews will identify any skill gaps and individual training requirements, which will provide input into each individual training plan and aggregate annual training budget. Both staff and the Department benefit from effective training and development.

As part of this Plan, the Department must ensure that examiners have reasonable and equitable access to education and training to enable them to sustain the range of skills needed in their positions. The training required to reach the next level of skill will also be identified in each assessment period. This training may be in the form of on-the-job training, external courses, or seminars and conferences.

Annual Merit Pay

Under this Plan, each year, with consideration given to financial resources and overall Department strategy and goal achievement, examiners who receive a satisfactory performance appraisal rating will be eligible to receive a merit pay increase. Examiners who receive an unsatisfactory performance appraisal rating will not be eligible to receive a merit increase.

As reflected in Table 6, the examiner merit pay pool will be divided into three (3) Tiers (column “A” below) based on the percentile ranking of the performance appraisal score of the examiners within that pool (column “B” below), and the employees within each Tier will be eligible to receive a merit pay increase within the corresponding range (column “C” below):

Table 6: Examiner Merit Pay Tiers

A	B	C
Merit Pay Tier	Percentage of Employees by Performance Appraisal Score Merit Pay Increase	Merit Pay Increase Range
Tier I	Top 25 percent of examiners provided all are rated at least “exceeds the expected level of performance”	2.5% to 5.0%
Tier II	Next 50 percent of examiners	1.0% to 3.0%
Tier III	Remaining employees rated at least “meets expected level of performance”	0% to 2.0%

If there is a tie in performance scores that causes a Merit Pay Tier to exceed its percentage maximum (e.g., 25% for Tier I), then all of the employees whose scores are tied for that Tier will be assigned to that Tier.

Should an examiner's salary, as a result of a merit pay increase, exceed the maximum of the range of his/her pay grade, the examiner will receive a one-time merit payment of the amount of the merit pay increase that exceeds the pay grade maximum.

One-Time Pay Increase

The use of one-time merit payments will also be allowed for outstanding achievements on time-bound projects and/or to supplement the salary increase process in recognizing commendable performance. One-time pay increases, however, should not be a substitute for annual merit increases for examiners.

Promotions

a. Journeyman Examiner Career Ladder. The journeyman examiner career ladder is a series of positions of increasing difficulty (Financial Examiner I, II, and III) which an examiner may progress through from the entry level to the full performance level. The full performance level is the highest grade level to which an examiner may be promoted without successfully achieving the Commissioned Examiner Designation.

b. Advancement. While promotions within journeyman examiner career ladder are neither automatic nor mandatory, career advancement is the intent and expectation in the journeyman examiner career ladder system.

c. Career Ladder Promotion. Examiners who receive a journeyman examiner career ladder promotion to a higher graded position will receive a 7 percent increase in their salary or the minimum of the new pay range, whichever is greater.

d. Commissioned Examiner Promotion. Examiners who successfully complete the Commissioned Examiner assessment and who receive a promotion to a higher graded position, (Financial Examiner IV, V, VI, or VII) will receive a minimum of 10 percent increase in their salary or the minimum of the new pay range, whichever is greater.

Funding for Merit Pay and Promotions

The concept of pay for performance is important for creating and communicating to examiners an effective compensation program that rewards and encourages high performance level. Therefore, as part of the budget process, a pool of resources will be allocated for merit pay and schedule promotions. This performance pool will be utilized for all salary adjustments and promotions throughout the fiscal year. While it is the intent of this Plan to provide examiners with annual salary increases when finances permit, it is specifically noted that the Plan does not guarantee that such increases will occur every year, nor does it guarantee the level of annual increase.

Federal Locality Pay

With the passage of the Federal Employees Pay Comparability Act in 1990, the revised General Schedule (GS) scale established local salary schedules incorporating locality pay. The locality pay program provides for localized pay differentials (also known as comparability payments) for Federal employees paid under the GS who work in the continental United States. The processes for determining locality adjustments are highly technical and outside the scope of this plan. However, the basic hypotheses underlying locality pay is that the differences in the competitiveness of local labor markets affect the federal government’s ability to recruit and retain federal workers.

Locality adjustments are paid within each area determined to have a Federal - non-Federal pay disparity greater than 5 percent. There currently are 35 locality pay areas, including Rest of U.S. area, Alaska, Hawaii, and other Nonforeign Areas, defined in 5 CFR Part 591. Locality pay counts toward accumulation of retirement benefits, life insurance coverage, Thrift Savings Plan investment levels, and most other benefits based on salary.

NCUA currently pays its Texas examiners a Locality Pay adjustment as shown below in Table 7. The amount of the adjustment is determined by increasing the base salary by the applicable locality rate (e.g., A Dallas Examiner IV with a base salary of \$78,305 and the locality rate of 26.25% is actually paid a salary of \$98,860).

Table 7: Federal Locality Pay in Texas – 2014

Pay Area	Locality Rate
Dallas	26.25%
Houston	30.06%
Rest of Texas including Austin	13.32%

In keeping with the Legislature’s philosophy, the Department has not paid examiners based on local labor market conditions. Despite regional differences in labor markets and costs of living, the Department pays the same wage for the same job regardless of location. For discussion purposes, however, Table 8 reflects the potential cost of adjusting current examiner salaries by the Locality Rates used by NCUA in Texas.

Table 8: Current Examiner Salaries with Locality Pay

Examiner	Current Salary	Locality Pay	Adjusted Salary
A	\$52,824	\$13,866	\$66,690
B	\$50,376	\$15,143	\$65,519
C	\$100,511	\$26,384	\$126,895
D	\$102,778	\$30,895	\$133,673
E	\$83,880	\$22,018	\$105,898
F	\$91,676	\$12,211	\$103,887
G	\$83,531	\$21,927	\$105,458

H	\$45,582	\$13,702	\$59,284
I	\$46,610	\$12,235	\$58,845
J	\$93,251	\$24,478	\$117,729
K	\$63,157	\$18,985	\$82,142
L	\$42,600	\$12,805	\$55,405
M	\$55,416	\$16,658	\$72,074
N	\$67,680	\$20,345	\$88,025
O	\$45,718	\$12,001	\$57,719
Total	\$1,025,590	\$273,653	\$1,299,243

Proposed Salary Adjustments

In keeping with the purpose of this Plan and based upon our analysis, we recommend that a merit performance pool be included in the FY 2015 Budget equal to 10 percent of the total aggregate salaries for fifteen examiner positions. This funding will allow the Department to bring examiner salaries up to a level that is more comparable with equivalent positions at the NCUA (absent a labor market differential).

Table 9: Proposed Examiner Merit Performance Pool

Current Aggregate Salaries	Percentage	Proposed Merit Performance Pool
\$1,025,590	10.0	\$102,559

Strategic Initiative Funding Request FY 2015 Budget

Initiative Name: MERIT INCREASE POOL – OFFICE STAFF

Initiative Priority: 3

	FY 2015
Objects of Expense:	
Salary & Wages	\$20,957
Payroll Related Costs	\$6,056
Travel Expenses	\$0
Other Operating Expenses	\$0
Total	\$27,013

Description/Justification: Recognizing and rewarding high performance is a key priority for driving excellence at the Department. When budgeted, all classified staff members participate in the Department’s merit pay program. The last merit increases for the office staff were budgeted for September 1, 2012.

The Department is proposing to establish a pool to fund merit increases for the office staff that have not received a salary adjustment elsewhere in the budget. The aggregate amount of the merit pool will be equivalent to 4 percent of the total salaries for the applicable staff positions. All awards made from the pool will be based on performance.

External/Internal Factors: Merit pay has traditionally been one of the most equitable systems to reward performance and motivate staff. Without proper funding, it will create a disincentive for higher performing staff.

Strategic Initiative Funding Request FY 2015 Budget

Initiative Name: EQUITY ADJUSTMENT FOR DEPUTY COMMISSIONER

Initiative Priority: 4

	FY 2015
Objects of Expense:	
Salary & Wages	\$19,662
Payroll Related Costs	\$5,682
Travel Expenses	\$0
Other Operating Expenses	\$0
Total	\$25,344

Description/Justification: Within the boundaries of financial feasibility, the Department's compensation program must be externally competitive in order to attract, retain, and reward qualified individuals. When an individual has the potential to go elsewhere at a higher salary, there is an opportunity cost to stay at the Department. Before those opportunity costs gets any larger, it is important for the Department to redress the current inequities with the Deputy Commissioner's salary level. As a result of tight budgets, scarce financial resources, and salary compression, the competitiveness of the salary for this position has eroded over the years. In addition, the Department needs to reward increasing performance, productivity, and contributed value by the new Deputy Commissioner. Accordingly, the Department is seeking a onetime adjustment to bring the salary for the position up to a level that is equal to 85 percent of the commissioner's salary position. Experience has demonstrated that over the long term, agencies pay the cost of ignoring problems related to salary inequities. As the job market begins to pick up, the Department must remain especially attuned to any perceptions of inequity or compression and the risks it poses to its ability to continue to attract, retain, and motivate the talent we need.

External/Internal Factors: An equity adjustment to the deputy commissioner's salary should be made in recognition of the influences that cause the deputy's compensation level to move out of line with his responsibilities from both an internal standpoint and external competitive market conditions. By way of reference, the Department of Banking has two deputy commissioners and these two individuals were paid \$176,564 and \$166,865 in 2013, which are respectively 85 percent and 81 percent of the Banking Commissioner's salary.

Strategic Initiative Funding Request FY 2015 Budget

Initiative Name: SPECIALIZED CONTRACT EXAMINER PROGRAM

Initiative Priority: 5

	FY 2015
Objects of Expense:	
Personnel Expenses	\$0
Travel Expenses	\$6,250
Other Operating Expenses	\$48,000
Total	\$54,250

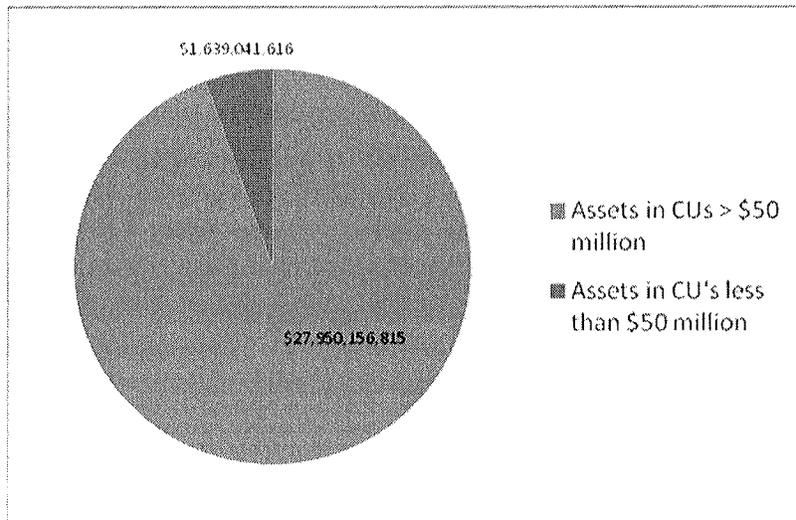
Description/Justification: The Department needs to augment the skills sets necessary to identify and address risks associated with complex asset liability structures, member business lending, and multifaceted payment and information systems before they become major problems. The Department is seeking funding to use third parties as contractors to supplement the skills available in current examination staff.

External/Internal Factors: The Department continuously assesses the expertise it needs to effectively supervise credit unions of all sizes and complexity; assessing gaps; and delivering the specialized expertise to properly evaluate each institution. While training programs are contributing to the development of these competencies in the Department's examination staff, the Department needs to periodically supplement its knowledge and skill sets to maintain the integrity of its examination program. In keeping with the Commission's guidance to maximize efficiency in using and allocating resources, the Department must, in the short-term, rely more on third parties contractors to fill perceived gaps in competencies.

Credit Union Department, State of Texas Specialized Contract Examiner Program FY 2015

Background

A review of the examination resources has identified a deficiency that precludes the Department from independently assessing major risk areas within Texas state chartered credit unions. The tenured examinations staff are trained as “generalist,” and as such, possess the knowledge and skills needed to perform routine safety and soundness examinations. However, as detailed in the chart below the majority of the assets in state chartered credit unions reside in institutions with assets greater than \$50 million. These institutions traditionally possess operational and financial characteristics which result in elevated risk profiles. The risks associated with complex asset liability structures, member business lending, and multifaceted payment and information systems, are increasing within the credit union system. Objectively, credit unions with assets greater than \$50 million often present one or more of these risk areas; however, issues can also exist at smaller credit unions that lack sufficient expertise. Throughout this discussion, institutions that represent these elevated risk levels will be considered “complex institutions.”



The limited size of the Department’s examination staff along with the longstanding practice of maintaining a generalized examination staff precludes an immediate transition to specialization. As a result, it is necessary to leverage off the resources available from the National Credit Union Administration (NCUA) to support examination and supervision activities in the complex institutions. NCUA has specialized tracks for examiners in information systems, capital markets, and lending. The Department is often dependant on NCUA to provide specialist in these areas to enable the completion of comprehensive examination and

supervision of state chartered credit unions. This dependence creates situations where Department initiatives and activities must be prescheduled with NCUA and subjected to its priorities, which at times are incongruent with those of the Department.

In an effort to bolster the Department capabilities, it was determined that training and staffing requirements would need to be changed; however the transition will require enhanced training, and retention of staff with differing skill sets. This process will likely take several years to fully develop and effect the requisite change within examination staff. As a result, in FY 2015 and 2016 the Department plans to utilize specialists to complement examination staff's efforts to examine and supervise these complex institutions

Program Objectives

1. Enhance the Department's examination and supervision capabilities through the use of contracted specialists.
2. Train and develop existing examiner staff in performance of complex ALM, lending, payment, and information systems examination work.
3. Fully assess risks within state chartered credit union engaged in complex financial and operational activities.
4. Mitigate and minimize risks in complex credit unions.
5. Transition to a staffing model that utilizes both generalist and specialists.

Program Details

In FY 2015 and 2016 the Department will hire specialists on a contract basis to assist in the examination and supervision of complex credit unions. The specialists will participate on examination and supervision efforts both on- and off-site. The determination related to the scope of the specialist's activity will be recommended by the Field Manager and approved by the Deputy Commissioner. Through the use of technology onsite (more costly) work will be kept at a minimum. Whenever possible analysis of policies, procedures, and processes will be performed offsite in advance of any onsite work by the specialist.

At the completion of each specialist engagement a report will be submitted to the Department for inclusion in its files for the individual credit union

Implementation

1. On an annual basis the Department will identify a select group of complex credit unions which will be targeted for reviews conducted by contracted specialists in concert with the annual examination.
2. The examination scope would be customized to facilitate these reviews. The examiner in charge would work with the specialist to prepare an advance records request to facilitate the review.

3. The specialist along with the examiner in charge will meet with management to discuss the review and any observations or issues.
4. Any issues identified as a result of the review will be addressed appropriately as Examiner’s Findings, and if material as Documents of Resolution.
5. The results of the review will be integrated into the report of examination and delivered to the board and management.

Resources

1. Retired examiners (banking, thrift, credit union)
2. NACHA certified Payments Specialists
3. Information Systems auditors and specialists (system security background)
4. Credit union and banking commercial lenders, auditors, and consultants
5. Capital Markets/ALM specialists and consultants.

Cost Estimates

For FY 2015, the Department estimates utilizing specialists on 5 examinations (three Information systems reviews, one Commercial Lending review, and one ALM review). The average engagement would be 40-80 hours, so an average of 60 is used in calculating the budget impact.

Information Systems Specialist	\$140-160 per hour
Commercial Lending Specialist	\$150-200 per hour
Capital Markets Specialist (ALM)	\$150-200 per hour

Wherever possible, costs will be offset by reallocating unutilized salary and travel funds resultant from examiner vacancies throughout the year. These estimates are projections based on experience and observations of actual costs incurred by credit unions using these services.

Strategic Initiative Funding Request FY 2015 Budget

Initiative Name: COLLEGE STUDENT PROGRAM

Initiative Priority: 6

	FY 2015
Objects of Expense:	
Salary & Wages	\$6,696
Payroll Related Costs	\$1,935
Travel Expenses	\$0
Other Operating Expenses	\$0
Total	\$8,631

Description/Justification: The Department is on a mission to find next generation examiners who will help us move forward. With this mission in mind, we are seeking funding to launch our college student program. The Program is designed to offer degree-related career experience as well as provide exposure to a Regulator’s understanding of the credit union industry. Under the Program students will have opportunities to learn about regulating the credit union industry while they develop practical skills, which can be applied throughout their professional lives. Ultimately, the Program will give the Department an opportunity to build relationships with talented students with the ultimate goal of offering regular full-time employment, upon graduation.

External/Internal Factors: The Department has historically placed a high priority on recruiting and retaining a diverse workforce, but the job market continues to evolve which necessitates that we look for new or better ways to adapt to the potential workforce challenges ahead. A Program such as this creates work experiences that relate to departmental needs and closely aligns with the student’s abilities, professional goals, and areas of interest. Of course, not all students will choose to make a career at the Department; but to the extent that some do, the agency benefits. To the extent that they learn more about credit unions, finance, and the ideals of public service, the State also benefits. Those that join other public or private sector firms will be in a position to exert a positive influence on those organizations.

Credit Union Department, State of Texas

Invites Applications for the Position of: Student Intern

Job Posting Number:
Class Number: 1000
Salary: \$12.40 Hourly
Opening Date:
Closing Date:
Work Address: 914 East Anderson Lane, Austin, Texas 78752
Hiring Contact: Dan Buckley, (512) 837-9236

General Description

The Credit Union Department College Student Program introduces interested students to career opportunities in a job setting to gain practical experience and training in the credit union regulatory field. This position is offered depending on available funding.

The Department regulates and supervises Texas-chartered credit unions. Student interns will support the Department by performing financial analysis and regulatory work. Work involves compiling, reviewing, and analyzing financial data; preparing reports responding to inquiries; and recommending action to deal with financial and regulatory problems.

The program runs approximately 15 weeks and the student will work a total of 180 hours. Upon completion of the Program, the Department may offer full-time employment upon the student's graduation contingent on meeting all job related requirements and the Department having a vacancy; but there is no guarantee. We will work with a college/university to establish formal learning plans upon request.

Requirements

Applicants must:

- Be a U.S. citizen currently enrolled as an undergraduate student in an accredited college or university with a junior or senior level standing;
- Have an overall grade point average (GPA) of 3.0 or higher on a 4.0 grade point scale or "Pass" on a Pass/Fail system;
- Be available to work 12 hours per week during regular business hours at Department offices in Austin, Texas.
- Have a high level of computer competency and a good aptitude with numbers.
- Be self-motivated, organized, willing to help with any project and be able to balance multiple priorities at once.
- Have a positive attitude.

- Be able to provide their own housing and transportation.

Preferred Qualifications:

- Experience in gathering and deciphering data.
- Experience creating and using statistical formulae in Microsoft Excel, resulting in meaningful analysis.
- Excellent written communication skills (memos, briefings, status updates are required) and verbal communication (presentations and interviews may be required).
- Major coursework in accounting, finance, economics, or related field.

Examples of Work Performed:

- Analyzes financial data; information; and applicable business, financial, and/or regulatory plans.
- Ensures compliance with established procedures; requirements, laws, rules; completeness of data; and presence of adequate documentation.
- Processes information by auditing and verifying financial data.
- Assists in development of regulatory plans, and in the reporting of trends affecting the credit union industry in Texas.

Knowledge and Skills:

- Strong understanding of accounting processes and principles.
- Strong analytical skills.
- Strong business application skills (e.g. Microsoft Excel).
- Strong written and verbal communication skills.
- Strong teamwork skills.
- Familiarity with financial statements.

Application Requirements

In order to be considered for the position, the following information is required:

- Submittal of a completed State of Texas Employment Application;
- A scanned copy of the previous fall's official college transcript(s) unofficial transcripts, or transcript marked "issue to student" must be submitted

Note: The lack of any of the required documents makes your application incomplete and it will not be considered. Resumes may accompany an application but do not substitute for the application. All applicants are also subjected to a criminal background check and a credit check.

Equal Employment Opportunity Employer

Please contact Human Resources at 512-837-9236 to request accommodation for the application process.

REPLACEMENT/CAPITAL IMPROVEMENT PLAN FY 2015-2017

FY 2015

<u>Proposed Maintenance Projects:</u>	<u>Estimated Cost</u>
Exterior Soffit lighting upgrade ⁹	\$ 2,500
Lightning Protection System ¹⁰	\$ 4,000
Replace water heater	\$ 1,500
<u>Continuing Capital Improvements:</u>	
Electronic Document Management Implementation ¹¹	\$40,000

Related new operating and maintenance costs (if any):

The upgrade in exterior lighting will not result in any new operating or maintenance cost.

The installation of a lightning protection system will not result in any new material operating or maintenance cost.

Obtaining a tankless, more energy-efficient water heater should reduce the ongoing operating and maintenance costs for hot water.

The estimated annual cost for capture and storage of documents is \$4800.

FY 2016

<u>Proposed Maintenance Projects:</u>	<u>Estimated Cost</u>
Carpet replacement	\$ 8,500
Vinyl floors	\$ 1,500

⁹ The exterior lighting is photo cell controlled perimeter soffit lighting and wall sconces. Fixtures are original to the building with a few exceptions.

¹⁰ The integrity of the electrical ground lead is unobservable. Accordingly, a comprehensive grounding system in conjunction with a lightning protection system will be installed for the protection of the building and its occupants.

¹¹ The Department continues to implement its electronic document management system, working with the DIR.

FY 2016 (continued)

Proposed Capital Improvements:

HVAC unit replacement with air duct returns ¹²	\$25,000
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Related new operating and maintenance costs (if any):

The installation of new floor coverings will not result in any new operating or maintenance cost. The installation of air duct returns will not result in any new material operating or maintenance cost.

FY 2017

Proposed Maintenance Projects:

Estimated Cost

Remodel Restrooms ¹³	\$ 7000
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Proposed Capital Improvements:

Partition secure computer server area ¹⁴	\$10,000
HVAC unit replacement	\$10,000

Related new operating and maintenance costs (if any):

The remodeling of the bathrooms, including more energy-efficient fixtures, will reduce operating and maintenance costs.

The construction of a secure computer server area will not result in any new operating or maintenance cost.

¹² The dropped ceiling of the building interior serves as the return plenum to the two primary five ton heat pumps. Installation of insulated air duct returns with zoned dampered controls would improve energy efficiency.

¹³ Restroom partitions need repair or replacement due to rust. Fixtures should be replaced with modern, energy-efficient models. Décor should be updated to maintain a professional appearance.

¹⁴ The Department's computer servers require a secure location with limited access and careful climate control.



**Credit Union Department
State of Texas**

FY 2015 Annual Operating Plan & Budget

**Approved by the Credit Union Commission
June 20, 2014**

INTRODUCTION

In accordance with Chapter 16 of the Finance Code, the Department has crafted the following *FY 2015 Annual Operating Plan and Budget*. This document aligns the goals and measures developed for the Department's *Strategic Plan for Fiscal Years 2015-2019* with the Department's proposed budget. It aims to improve the links between the Department's resource needs, effectiveness, and outcomes.

THE DEPARTMENT TODAY

The Department is a self-directed and semi-independent agency that is responsible for ensuring a safe and sound credit union system for all Texans. This is accomplished through the effective chartering, regulation, and supervision of Texas-chartered credit unions. The operations of the Department are funded primarily by semiannual assessments levied on credit unions. The Department receives no state monies from the General Revenue Fund.

As of December 31, 2013, the Department was responsible for regulating and supervising 189 credit unions. Based on the year-end call reports, Texas-chartered credit unions held \$30.5 billion in assets or approximately 9.83 percent of total aggregate credit union assets in Texas.

GOALS AND OUTCOMES

The Credit Union Commission has established four strategic goals to guide the operations of the Department and to contribute to the achievement of its mission and performance goals. The Commission's goals are:

1. To ensure a safe and sound state credit union system in Texas;
2. To provide a flexible regulatory framework that enables credit unions to provide a full competitive array of financial services;
3. To safeguard the interest of credit union members; and
4. To develop a professional and motivated staff that provides quality service to the citizens of Texas and supports achievement of the Department's statutory mission.

The Department works to meet these goals by, among other things, detecting violations and potential problems or issues in the Texas credit union system and ensuring that the violations are addressed; crafting rules that strengthen corporate governance and operations; ensuring credit union members are treated fairly; and making sure that the Department's human capital strategies, information technology initiatives, and resources are appropriately aligned to achieve the Department's mission, goals, and outcomes.

Like other regulatory agencies, the Department has found it challenging to develop measures that accurately depict the outcomes of the agency's activities. In many instances the effects of the

agency's efforts can only be indirectly assessed. The Department intends to continue refining its work in this area as it gains more experience in integrating its budget and performance functions. As part of this effort, the Department will continue to assess alternatives for measuring outcomes that help the public gauge the Department's progress in achieving its mission, as well as assisting staff in meeting their objectives.

Strategic Goal 1: A Safe and Sound Credit Union Industry

Strategic Objective 1.1: The Department anticipates, understands, addresses, and communicates risk to credit unions. The Department seeks to fulfill this objective by:

1. Establishing the appropriate regulatory framework.
2. Ensuring risk-based supervision is properly implemented and focused on material risks to the industry and individual credit unions.
3. Identifying emerging risk areas related to industry and individual credit unions.
4. Complying with the examination requirements of 7 TAC Section 97.105.
5. Resolving problem credit unions in a timely fashion, effectively, and when possible, without loss to the share insurance provider.
6. Taking prompt and effective enforcement actions when warranted.

Strategic Objective 1.2: The Department cooperates with other regulatory authorities on common interests. The Department seeks to fulfill this objective by:

- 1. Working effectively with the NCUA, private share insurance providers, and other state regulators to identify and address risks and emerging issues.**
- 2. Implementing and developing new coordination and collaboration agreements with NCUA, private share insurance providers, and other applicable state regulators regarding supervisory activities performed in credit unions and information exchange.**

Strategic Objective 1.3: Supervisory methods and analytical tools keep pace with industry changes and appropriately support the broader mission of the Department. The Department seeks to fulfill this objective by:

- 1. Utilizing analytical tools and reports to effectively use the data collected from credit unions to foster informed decision making for supervisory operations and policy.**
- 2. Deploying supervisory technology solutions to enhance data quality and provide user-friendly examiner access to key credit union and industry information.**

FY 2015

Informational Measures

Number of state-chartered credit unions
Number of regular examinations performed

Number of follow-up contacts made
Number of enforcement actions issued
Percentage of credit unions with composite CAMEL ratings of 1 or 2
Percentage of assets held in credit unions with CAMEL ratings of 1 or 2
Percentage of credit unions that are “Well Capitalized” as defined by federal statute

Production Measures

Percentage of credit unions receiving regular examination: **90**
Percentage of applications approved or denied within 60 days: **100**
Percentage of reports mailed to credit unions within 20 days: **98**

Strategic Goal 2: A flexible legal and regulatory framework that enables credit unions to provide a competitive array of financial services

Strategic Objective 2.1: Each Commission rule is current, clearly written, and necessary for an effective supervisory process. The Department seeks to fulfill this objective by:

- 1. Drafting, amending, and implementing rules to fulfill Legislative directives and to ensure relevance to current conditions.**
- 2. Conducting the mandatory rule review in accordance with Commission’s approved plan.**
- 3. Implementing rulemaking through successful collaboration and consultation with interested parties.**

Strategic Objective 2.2: The Department supports credit union efforts to remain competitive, consistent with safety and soundness. The Department seeks to fulfill this objective by:

- 1. Supporting the continued recognition of the attributes of the state credit union charter through appropriate opinions and rules.**
- 2. Developing and modernizing attributes of the credit union charter and the role and status of the industry.**
- 3. Enhancing communication with NCUA and other state regulators to facilitate better coordination on issues affecting credit unions.**
- 4. Communicating attributes of the state charter within and outside the Department.**

Strategic Objective 2.3: Application procedures are efficient and consistent with safety and soundness. The Department seeks to fulfill this objective by:

- 1. Providing a standardized application package.**
- 2. Establishing policies and procedures that provide clear and comprehensive guidance.**
- 3. Implementing and maintaining processes for prompt screening of applications**
- 4. Enhancing existing technology solutions that support effective application operations.**

FY 2015

Informational Measures

- Number of new rules adopted
- Number of rules amended
- Number of rules re-adopted without change
- Number of applications processed
- Number of requests for interpretations/opinions of Act and Rules
- Number of contested cases referred to SOAH
- Number of Public Information Act requests processed
- Number of public forums in which Department participates
- Total Assets in state-chartered credit unions
- Percentage increase in total aggregate credit union assets

Production Measures

- Percentage of rule changes provided to credit unions within 60 days: **100%**
- Percentage of interpretations/opinions issued within 30 days: **100%**

Strategic Goal 3: Safeguard the interest of credit union members

Strategic Objective 3.1: All credit union members have reasonable access to credit union services and are treated fairly and lawfully. The Department seeks to fulfill this objective by:

- 1. Reinforcing the importance of fair and honest treatment of credit union members through appropriate supervisory and enforcement action.**
- 2. Expanding the agency's role in resolving and/or mediating member complaints handled by the Department.**
- 3. Strengthening role in addressing member privacy, information security, and identity theft.**
- 4. Enhancing the Department's consumer compliance examination program.**

Strategic Objective 3.2: Credit unions are involved in providing financial services in underserved communities within this State. The Department seeks to fulfill this objective by:

- 1. Supporting the efforts of credit unions to expand their fields of membership to include underserved and low income communities.**
- 2. Facilitating the process for credit unions to obtain a low-income designation from NCUA.**
- 3. Participating in financial literacy efforts by the industry and other agencies.**

FY 2015

Informational Measures

Number of complaints processed

Percentage of credit unions providing services to low income or underserved populations

Production Measures

Percentage of complaints responded to within 30 days: **95%**

Strategic Goal 4: Develop a professional and motivated staff that provides quality service and supports achievement of the Department's statutory mission.

Strategic Objective 4.1: The Department maintains a competent, highly motivated, and diverse workforce in a fair and inclusive work environment. The Department seeks to fulfill this objective by:

- 1. Maintaining a comprehensive Equal Employment and Workforce Diversity Plan.**
- 2. Executing an aggressive recruiting and comprehensive training strategy for new entry-level examiners.**
- 3. Developing proactive initiatives focused on the retention of employees, including mentoring, employee feedback, incentives, and recognition programs.**
- 4. Creating a leadership development program to support and enhance management succession.**
- 5. Implementing an external hiring strategy to augment specialized skills to enhance the Department's supervision of complex credit unions.**

Strategic Objective 4.2: The Department is an efficient, effective, and ethical organization. The Department seeks to fulfill this objective by:

- 1. Ensuring compliance with laws, rules, and stewardship of its resources through program evaluations and a quality management framework.**
- 2. Ensuring compliance with the rules, policies and procedures for ethical conduct by its employees.**
- 3. Ensuring reliable, secure, modern information technology systems are in place in support of an environment that meets the Department's mission, goals, and objectives.**
- 4. Leveraging technology, with particular focus on information management initiatives, such as records and knowledge management.**

Strategic Objective 4.3: The Department's resource decisions and operations reflect sound financial, security, and risk management principles. The Department seeks to fulfill this objective by:

- 1. Implementing security controls to mitigate risk and to protect confidential information.**
- 2. Improving contingency planning for business continuity, including information technology recovery, compliance with Homeland Security requirements, and crisis management strategies.**

3. Achieving reliable, accurate and timely financial resources management information.

FY 2015

Informational Measures

Annual examiner turnover rate
Average regulated assets per examiner (millions)
Annual staff turnover rate
Number of days of formal training attended by staff
Number of contracts awarded to HUB vendors
Percentage of contracts awarded to HUB vendors

Production Measures

Percentage of credit unions indicating quality service annually: **90%**

BUDGET – FY 2015

	Total 2015 Budget
REVENUE:	
Operating Fees	\$3,490,764
Examination Fees	
Application Fees	
Penalties	
Refund/Reimburse Expenditure	
Other	
TOTAL REVENUES:	\$3,490,764
FTEs	27.0
EXPENDITURES:	
Personnel Expenses	
Salaries and Wages	\$2,079,446
Payroll Related Costs	\$ 626,692
Other Personnel Costs	\$ 37,720
Total Personnel Expenses	<u>\$2,743,858</u>
Travel Expenses	
In State	\$ 373,466
Out-of-State	\$ 10,000
Commission	\$ 11,000
Total Travel Expenses	<u>\$ 394,466</u>
Other Operating Expenses	
Communications/Utilities	\$ 38,050
Professional Services/Fees	\$ 45,800
Supplies/Materials	\$ 15,910
Training/Registration	\$ 13,680
Repairs/Maintenance	\$ 51,670
Rentals and Leases	\$ 4,761
Computers	\$ 23,600
Other Operating	\$ 78,469
State of Texas Services	\$ 80,500
Total Other Operating Expenses	<u>\$ 352,440</u>
TOTAL EXPENDITURES	<u>\$3,490,764</u>
CONTINGENCY RESERVE	\$ 845,000

CUMULATIVE RESOURCES

Fiscal Year	2009	2010	2011	2012	2013	2014
Authorized FTE	26	24.5	24.5	24.5	25	25
Actual FTE	21.53	21.88	22.5	23.5	23.5	TBD
Budgeted Dollars	\$2,339,083	\$2,479,994	\$2,656,716	\$2,814,637	\$2,969,435	\$3,024,386
Actual Dollars	\$2,204,679	\$2,250,508	\$2,520,819	\$2,572,236	\$2,823,222	TBD

BUDGET ASSUMPTIONS FOR FY 2015

The following broad assumptions will establish the basic foundation for development of the Department's FY 2015 budget and provide a framework to staff and the Commission for setting priorities, determining service levels, and allocating limited financial resources.

1. **Balance Budget** – The budget will be balanced using the FY 2013 ending balance in excess of the contingency reserves.
2. **Contractual Obligations** – The Department intends to meet all contractual obligations.
3. **Compliance** – The budget shall provide sufficient funding to continue compliance with all applicable statutes, governmental requirements, administrative rules, and Department policy in regulating and supervising the safety and soundness of credit unions.
4. **Strategic Plan Initiatives** – Consistent with the FY 2015-2019 strategic plan, the budget will provide appropriate funding to implement the delineated initiatives for FY 2015.
5. **Salary and Benefits** – The expenditures for FY 2015 will be based on authorized and existing positions as of August 31, 2014 and include any scheduled salary increase/promotion prescribed in the *Salary Administration Plan for Examination Staff*. Filled position will be budgeted at the actual salary for the individual in that position and vacant positions will be budgeted at the mid-point of the salary range for the positions. Employee Benefits will be automatically calculated on all salaries with the appropriate benefit rates established for state agencies.
6. **Merit Increases-Field Examiners** – To foster, support, and reward outstanding performance and to retain key high performing field examiners, aggregate merit increase awards for field examination staff will not exceed an amount equivalent to 10% of the total salaries for those field positions and will be awarded based on performance. The corresponding increase in Employee Benefits, resulting from the proposed merit awards, will also be properly reflected in the budget.
7. **Merit Increases-Office Staff** – To reward outstanding performance aggregate merit increase awards for staff working in the Austin office will not exceed an amount equivalent to 4% of the total salaries for those positions and will be awarded based on performance. The corresponding increase in Employee Benefits, resulting from the proposed merit awards, will also be properly reflected in the budget.

8. **Equity Adjustment** – To correct an unacceptable salary inequity between the deputy commissioner’s salary and the salaries of similar positions in other agencies, the budget shall include funding for a pay increase to move the Deputy’s salary more in line with his responsibilities from an internal standpoint and external competitive market conditions. The corresponding increase in Employee Benefits, resulting from the proposed equity adjustment, will also be properly reflected in the budget.
9. **Inflation Factor** – No inflationary increases are anticipated, with the exception of increases in the cost of utilities and travel.
10. **Statewide Indirect Cost** – Statewide indirect cost allocations are a result of a statewide plan established by the Comptroller of Public Accounts. Changes in indirect cost allocations are anticipated to be allowable budget adjustments.
11. **Out-of-State Travel** – Travel related to regulatory matters, including examinations, inspections, and the training will be exempt from the limitations on out-of-state travel; expenditures for all other out-of-state travel by the Department will not exceed \$10,000.
12. **Electronic Document Management System** – The budget shall provide funding to fully implement the electronic document management solution and cover the associated annual cost for the capture and storage of documents.
13. **Information Technology** – The budget shall provide sufficient funding for computer network upgrades and computer equipment replacement in accordance with the Information Resources Strategic Plan.
14. **Improvements** – The budget shall provide sufficient funding for scheduled maintenance and repairs in accordance with the Replacement/Capital Improvement Plan.
15. **NASCUS Dues** – The budget shall provide sufficient funding to accommodate the projected increase in the professional association’s dues.
16. **Accreditation Fees** – The budget shall provide sufficient funding to accommodate the fees associated with the Department’s continued NASCUS accreditation.
17. **Overnight Travel Stipend** – A portion of any unobligated and unexpended funds in the FY 2015 budget may be used to pay examiners an overnight travel stipend for any overnight stays in excess of 60 days out. The daily rate paid will be in accordance with the qualifying conditions included in the Department’s policy. The stipend will not be considered a one-time merit award and may be paid to the eligible examiners regardless of their last merit pay or promotion action.

COMMITTEE APPOINTMENTS

F. (c) Discussion of the Chair's Appointments to the Commission's Two Standing Committees (Rules and Commissioner Evaluation).

BACKGROUND: As required by Commission Policy, the Chair must appoint members to those committees established by the Commission. Currently, the Commission has two standing committees:

1. Commissioner Evaluation Committee
 - **Members.** The Commission Chair shall appoint a Commissioner Evaluation Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.
 - **Purpose.** The purpose of the Committee shall be to coordinate the annual evaluation of the Commissioner's performance and to oversee the development and maintenance of a Commissioner succession plan.
2. Rules Committee
 - **Members.** The Commission Chair shall appoint a Rules Committee of at least three members, and shall designate one member as Chair. The Commission Chair will serve as an ex-officio member of this committee.
 - **Purpose.** The purpose of the Committee is to conduct thorough deliberations and scrutiny of proposed rulemaking and assigned projects, and to bring to the Commission the results of its deliberations and its recommendation for Commission action.

The Chair will announce his appointments to the two committees at the meeting.

G

EXECUTIVE SESSION

(closed to public)

G. The Commission may go into Executive Session on any Agenda Item if Appropriate and Authorized by the Open Meeting Act, Texas Government Code, Chapter 551.

H

OTHER BUSINESS

H. (a) If Necessary, Vote on Matters discussed in Executive Session.

(b) Next Commission Meeting – The next regular meeting of the Commission has been tentatively scheduled for October 17, 2014.

Adjournment

CREDIT UNION DEPARTMENT

INDUSTRY STATUS

AND

DEPARTMENTAL OPERATION

AFFIRMATIVE ACTION/EEO QUARTERLY REPORT
3rd Quarter - FISCAL YEAR 2014

During this fiscal year the Department is authorized to have 25 Employees.

	White		Black		Hispanic		Asian		Total
	Male	Female	Male	Female	Male	Female	Male	Female	
No. of Employees on 2nd quarter	13	3	0	4	2	1	1	0	24
Resignations (retirees)	1	0	0	0	0	0	0	0	1
New Hires	0	0	0	0	0	0	0	0	0
No. of Employees on 3rd quarter	12	3	0	4	2	1	1	0	23
Resignations (retirees)	0	0	0	0	0	0	0	0	0
New Hires --	0	0	1	0	0	0	0	0	1
Grand Total of Employees	12	3	1	4	2	1	1	0	24
Promotions - 3rd Quarter									0

Percent Male 66.67%
 Percent Female 33.33%

Salary Breakdown

	<u>2nd quarter</u>	<u>3rd quarter</u>	<u>Average Tenure</u>	
Average of Salaries	\$ 68,868	\$ 71,394	137.7	months
Average Salaries - White	\$ 73,891	\$ 77,838	129.2	months
Male	12 \$ 74,063	\$ 78,574	144.8	months
Female	3 \$ 63,458	\$ 63,458	106.8	months
Average Salaries - Black	\$ 60,865	\$ 60,865	157.7	months
Male	1 \$ -	\$ 63,156	1.8	months
Female	4 \$ 60,865	\$ 60,865	157.7	months
Average Salaries - Hispanic	\$ 55,821	\$ 55,821	145.4	months
Male	2 \$ 54,884	\$ 54,884	28.8	months
Female	1 \$ 57,696	\$ 57,696	378.7	months
Average Salaries - Asian	\$ 83,531	\$ 83,531	169.8	months
Male	1 \$ 83,531	\$ 83,531	169.8	months
Female	0 \$ -	\$ -	0.0	months
	24			

Exmr. Experience - 3rd quarter

Less than 1 year	2	Average Salary	\$ 50,446
1 - 2 years	1	Average Salary	\$ 46,610
2 - 5 years	3	Average Salary	\$ 55,061
5 - 10 years	2	Average Salary	\$ 47,351
Over 10 years	7	Average Salary	\$ 89,960
Total	15	Average Salary	\$ 72,553

Texas Credit Union Department

Executive Summary

As of 02/28/14

*Information from call report cycle

ACTIVITY	YTD 2012	YTD 2013	2014 FISCAL YEAR				YTD
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
MOVEMENT PROFILE							
Number of CUs	195	190	189	189			
Total Assets (Millions)	*27,656	*29,549	*29,793	*30,491			
APPLICATIONS (Received)							
Charters	1	0	0	0			0
Foreign Branches	0	0	0	0			0
Conversions	1	1	0	0			0
Mergers	6	13	1	0			1
Bylaws	49	53	14	23			37
Articles of Incorporation	7	2	3	1			4
Total	64	69	18	24	0	0	42
EXAMINATION ACTIVITIES							
Regular	94	90	20	10			30
Joint	77	70	25	22			47
Remedial	43	44	10	11			21
Total	214	204	55	43	0	0	98
ENFORCEMENT ACTIONS (In Force)							
Determination Letters	8	5	3	4			
LUAs	0	2	3	3			
Cease & Desist Orders	0	1	0	0			
Dividend Restrictions	0	0	0	0			
Conservatorships	1	1	1	1			
Liquidations	2	1	1	1			
Total	11	10	8	9	0	0	
PERSONNEL STAFFING							
Field Examiners	14	15	15	13			
Total Personnel	24	25	24	23			
FINANCIAL OPERATIONS (In Thousands)							
Budgeted Expenditures	2,815	2,969	756	756	0	0	1,512
Actual Expenditures	2,524	2,769	687	681	0	0	1,368
Gifts and Bequests	7,729	n/a	n/a	n/a	0	0	n/a
Actual Revenue	2,829	2,746	1,827	2	0	0	1,829

Texas Credit Union Department

Application Activities - Detail

ACTIVITY	4th Qtr 2012	4th Qtr 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
CHARTERS							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	1	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	1	0	0	0	0	0	
FOREIGN BRANCH OFFICES							
Pending at Beginning of Period	0	0	0	0	0	0	
Add: New Applications Filed	0	0	0	0	0	0	
Less: Approved	0	0	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	0	0	0	0	
CONVERSIONS							
Pending at Beginning of Period	1	0	1	0	0	0	
Add: Applications Filed	0	1	0	0	0	0	
Less: Approved	0	0	1	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	1	1	0	0	0	0	
MERGERS							
Pending at Beginning of Period	4	4	5	4	0	0	
Add: Applications Filed	1	5	1	1	0	0	
Less: Approved	2	4	2	4	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	3	5	4	1	0	0	
BYLAWS							
Pending at Beginning of Period	3	3	7	1	0	0	
Add: Applications Filed	15	17	14	23	0	0	
Less: Approved	15	13	19	23	0	0	
Denied/Withdrawn	1	0	1	1	0	0	
Pending at End of Period	2	7	1	0	0	0	
ARTICLES OF INCORPORATION							
Pending at Beginning of Period	1	1	0	3	0	0	
Add: Applications Filed	2	0	3	1	0	0	
Less: Approved	3	1	0	0	0	0	
Denied/Withdrawn	0	0	0	0	0	0	
Pending at End of Period	0	0	3	4	0	0	

Texas Credit Union Department
Movement Profile - Condition Summary

CAMEL RATING	4th Qtr 2012	4th Qtr 2013	2014 FISCAL YEAR			
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
1	31	27	24	26	0	0
2	123	128	132	133	0	0
3	36	30	31	28	0	0
4	5	5	2	1	0	0
5	0	0	0	0	0	0
Total	195	190	189	188	0	0

Texas Credit Union Department
Enforcement Actions - Detail

TYPE OF ACTION	In Force 8/31/2012	Issued	Activity Terminated	In Force 8/31/2013	Issued	Activity Terminated	In Force 2/28/2014
Determination Letters	8	3	1	5	1	2	4
LUAs	0	1	0	2	1	0	3
Cease & Desist Orders	0	1	0	1	0	1	0
Dividend Restrictions	0	0	0	0	0	0	0
Conservatorships	1	0	0	1	0	0	1
Liquidations	2	0	1	1	0	0	1
Total	11	5	2	10	2	3	9

Texas Credit Union Department
Examination Activities
Analysis of Current Year

TYPE OF EXAM	Budgeted Number	Actual Number	% Budget	% of Total	% Mailed Within 20 Days
EXAMINATIONS COMPLETED					
Regular	44	30	68	16	100
Joint	42	47	112	25	100
Remedial	20	21	105	11	100
Total	106	98	92	46	100

Texas Credit Union Department
Movement Profile - Consumer Complaints

CONSUMER COMPLAINTS	YTD 2012	YTD 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
Received	183	223	59	56	0	0	115
Closed	174	223	59	62	0	0	121
Avg. Days to Process	13	15	14	14	0	0	14
% Resolved in 30 Days	100%	100%	100%	100%			

Texas Credit Union Department
Consumer Complaint - Detail

TYPES OF COMPLAINTS	YTD 2012	YTD 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
LOAN ISSUES							
Collections	40	28	1	3			4
Procedure Irregularity	19	11	6	15			21
Denial	5	5					0
Cross Collateralization	3	4					0
Credit Report Issues	5	11	5	5			10
Collateral Protection Insurance	7	10	2				2
ACCOUNT ISSUES							
NSF/Overdraft	21	30					0
Electronic Funds Transfer	7	6	3	2			5
Holds on Checks	8	9		1			1
Posting Order	3	5	1	1			2
Fraud/Unauthorized	5	9	3	6			9
Fees	4	12	13	7			20
Billing Disputes	0	0	3	2			5
Other	0	0	3	4			7
OTHER PRODUCTS/SERVICES							
Account/Loan Balance	29	37	8	7			15
Account Closed/Frozen	10	12	3	1			4
Customer Service	8	34	5	4			9
Deceptive Advertisement	0	0	1	2			3
Vehicle Title	0	0	1	2			3
Website Issues	0	0	1				1
TOTAL	174	223	59	62	0	0	121

Texas Credit Union Department
Merger/Conversion Finalized

ACTIVITY	YTD 2012	YTD 2013	2014 FISCAL YEAR				
			1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	YTD
MERGERS							
Number:							
State-to-State	4	5	1				1
Federal-to-State	4	5		3			3
State-to-Federal	2	1	1	1			2
Total	10	11	2	4	0	0	6
Assets:							
State-to-State	73,141,273	53,478,655	20,338,698				20,338,698
Federal-to-State	20,098,171	216,192,063		57,388,846			57,388,846
State-to-Federal	11,387,797	1,103,403	128,479	5,711,216			5,839,695
Total	104,627,241	270,774,121	20,467,177	63,100,062	-	-	83,567,239
CONVERSIONS							
Number:							
Federal-to-State	1	2	1				1
State-to-Federal	0	0					
State-to-Mutual Bank	0	0					
Assets:							
Federal-to-State	1,186,980,460	507,898,295	441,814,185	-	-		441,814,185
State-to-Federal	-						
State-to-Mutual Bank							
Total	1,186,980,460	507,898,295	441,814,185	-	-	-	441,814,185

CUD
Web Site Statistics
Report Range: 12/01/13-02/28/14

	Number
Total Visits:	
Number of Visits	4,292
Visitors	2,920
Page Views	11,443
Number of Repeat Visitors	1,670
Average Pages per Visit	2.67
Average Visit Duration	2:30
 Most Requested Pages:	
Home Page	3,563
Texas Rules for Credit Unions	895
Employment	797
Job Postings	616
Contact Us	448
 Most Downloaded Files:	
January 2014 Newsletter	534
December 2013 Newsletter	440
February 2014 Newsletter	440
Job Vacancy Notice (Financial Examiner)	243
Credit Union Listings (11-25-13)	237

Survey Responses from February 1, 2014 thru May 31, 2014

Examinations

Reflects summary responses from 14 surveys received or 82 % of the 17 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	13	0	0	1	0	
Q 2. The pre-examination requests were reasonable in scope.	11	3	0	0	0	
Q 3. Materials requested in the pre-examination were used during the examination.	10	4	0	0	0	
Q 4. The pre-examination request made the examination run more efficiently.	11	2	1	0	0	
Q 5. The examiners were knowledgeable about your credit union.	9	3	0	2	0	
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	9	4	0	1	0	
Q 7. The examiners were responsive to your questions and concerns.	11	0	2	0	1	
Q 8. The examiners communicated effectively with the credit union throughout the examination.	11	1	0	2	0	
Q 9. The examiners treated you professionally.	11	1	2	0	0	
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	12	2	0	0	0	
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	12	2	0	0	0	
Q 12. Management was given the opportunity to react to the examination findings.	11	2	1	0	0	
Q 13. The examination was completed within a reasonable timeframe.	11	2	0	1	0	
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	11	2	0	1	0	
Q 15. The report was easy to understand.	10	2	1	1	0	
Q 16. The report accurately portrayed your credit union's practices and condition.	7	2	1	3	0	1
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	11	2	0	1	0	
Q 18. The report contained useful recommendations for improving safety and soundness practices.	10	2	2	0	0	

Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	9	3	0	2	0	
Q 20. The examination was conducted in a fair and objective manner.	11	0	2	1	0	

Applications

Reflects summary responses from 2 surveys received or 9 % of the 22 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Q 1. Department staff provided timely and accurate feedback/answers.	1	1	0	0	0
Q 2. Department staff communicated with me in a courteous and professional manner.	2	0	0	0	0
Q 3. The application process was efficient.	1	0	1	0	0
Q 4. The Department's requests for information were reasonable.	0	1	1	0	0
Q 5. The Department's website was helpful in completing my application.	0	0	1	1	0

Complaints

Reflects summary responses from 9 surveys received or 29 % of the 31 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. It was relatively easy to file a complaint with the Department.	5	1	1	1	1	
Q 2. Department staff communicated with me in a courteous and professional manner.	4	1	1	1	2	
Q 3. I believe Department staff understood the basis of my complaint.	3	2	0	0	3	1

Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	3	0	1	0	4	1
Q 5. The explanation given was fair considering applicable laws.	3	1	1	0	3	1
Q 6. The Department website was helpful in the complaint process.	4	3	0	0	2	

Survey Responses from September 1, 2013 thru May 31, 2014

Examinations

Reflects summary responses from 41 surveys received or 55 % of the 75 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 1. The lead-time was sufficient to gather the information requested prior to the on-site examination.	34	6	0	1	0	
Q 2. The pre-examination requests were reasonable in scope.	29	12	0	0	0	
Q 3. Materials requested in the pre-examination were used during the examination.	30	9	2	0	0	
Q 4. The pre-examination request made the examination run more efficiently.	31	6	2	1	0	1
Q 5. The examiners were knowledgeable about your credit union.	23	10	4	4	0	
Q 6. The examiners demonstrated a thorough understanding of safety and soundness issues.	24	12	1	4	0	
Q 7. The examiners were responsive to your questions and concerns.	29	4	4	2	2	
Q 8. The examiners communicated effectively with the credit union throughout the examination.	28	8	0	4	1	
Q 9. The examiners treated you professionally.	33	4	3	1	0	
Q 10. The examiners explained the CAMEL Ratings in sufficient detail.	31	7	1	1	1	
Q 11. All major findings of the examination were discussed with you prior to the examiners leaving your credit union.	35	4	1	0	1	
Q 12. Management was given the opportunity to react to the examination findings.	30	7	3	1	0	
Q 13. The examination was completed within a reasonable timeframe.	29	8	1	3	0	
Q 14. The report accurately reflected the examination findings as conveyed to you during the examination.	30	6	1	4	0	
Q 15. The report was easy to understand.	28	8	3	1	0	
Q 16. The report accurately portrayed your credit union's practices and condition.	20	9	2	7	1	2
Q 17. The transmittal letter and other written communications concerning the examination report was clear and concise.	29	7	2	3	0	
Q 18. The report contained useful recommendations for improving safety and soundness practices.	21	9	8	2	1	

Examinations (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 19. The examination findings will assist you in enhancing your safety and soundness practices.	22	8	6	4	1	
Q 20. The examination was conducted in a fair and objective manner.	29	2	6	4	0	

Applications

Reflects summary responses from 13 surveys received or 23 % of the 57 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Q 1. Department staff provided timely and accurate feedback/answers.	10	3	0	0	0
Q 2. Department staff communicated with me in a courteous and professional manner.	11	2	0	0	0
Q 3. The application process was efficient.	8	3	1	1	0
Q 4. The Department's requests for information were reasonable.	9	3	1	0	0
Q 5. The Department's website was helpful in completing my application.	8	3	1	1	0

Complaints

Reflects summary responses from 24 surveys received or 28 % of the 86 surveys mailed

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Q 1. It was relatively easy to file a complaint with the Department.	11	5	5	2	1
Q 2. Department staff communicated with me in a courteous and professional manner.	14	4	3	1	2
Q 3. I believe Department staff understood the basis of my complaint.	10	5	2	1	5

Complaints (Continued)

Questions	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree	No Response
Q 4. The response provided by the Department addressed the important aspects of my complaint.	8	4	4	1	6	1
Q 5. The explanation give was fair considering applicable laws.	5	3	3	1	3	1
Q 6. The Department website was helpful in the complaint process.	9	9	3	1	2	